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THE Court of Appeal in England has recently, in the case of *Re* Missouri Steamship Company, expressed strong disapproval of the growing practice of citing American decisions as authorities on that side of the Atlantic. In that case it was laid down that when a contract made in one country, is to be performed in another, it is *prima facie* to be construed and enforced according to the *lex loci contractus;* but that the court will look at all the circumstances to ascertain by the law of which country the parties intended the contract to be governed, and will enforce the contract accordingly, unless it should contain stipulations contrary to morality or expressly forbidden by positive law. Lord Justice Fry, however, took occasion to say that he was "glad to find that he was in entire accordance with the law laid down in the American courts," which prompts the London *Law Times* to remark that there is no doubt that reference to English authorities by American courts, and to American authorities by English courts, are both frequently and beneficial, calling attention, as an instance, of such beneficial use of English authorities, to the case of Norrington v. Wright, 115 U. S. 189, in which the supreme court exhaustively discussed the English cases of Hoare v. Rennic, Simpson v. Crippen and Houck v. Miller, and pointed out that Simpson v. Crippen, in which it was held that a contract to supply some 6,000 tons of coal to be delivered into buyer's wagons in equal monthly quantities for twelve months, was not justifiable cancelled on the ground of the buyer taking only 158 tons in the first month, is bad law. And in the famous case of Readhead v. Midland Railway Company, the then conflicting cases in the American courts, on the point whether or not railway companies are liable to passengers as insurers, will be found examined with very great care by the Exchequer Chamber. "The English Courts," it is there said, "are desirous to treat the American decisions with great respect; but as their authority here must mainly depend on the reasons on which they are founded, we have felt bound to examine the reasons on which this decision" (Alden v. New York Central Railway Co., 12 Smith, 102), "was based, with the result of disagreeing with its principle, and pronouncing against a contract of insurance."

It strikes us that the view taken by the English Court of Appeal, is narrow minded to say the least. In the consideration of close questions of law it would seem that the examination and discussion of adjudicated cases, of course each having its relative weight in proportion to its source and soundness, no matter from where they come, might be made not only with propriety but frequently with good result. Certainly no harm can come of it, and the spectacle of one of the highest courts of England, discouraging the use of imported reason and authority, is unique in the extreme.

WE have read with great pleasure the very interesting address of General John McNulty, delivered before the Illinois State Bar Association, on the "Interstate Commerce Law." Few men are as well fitted by experience to speak of the practical workings of that law, and his clear exposition of its operation will help to remove some misconceptions. Most people who regard the effect of the interstate commerce law and the work of the commission created by it in a disinterested spirit, are now substantially agreed that the law has been on the whole a good thing. It has not eradicated the abuses against which it was aimed, but it has rendered some of them less flagrant, and perhaps little more has been expected by those best qualified to judge. There are some amendments which might with good effect be added, and especially one referred to by General McNulty, to provide for interstate carriers engaged exclusively in interstate traffic controlled solely by federal law. The irreconcilable conflict between State and federal authority which is liable every day to arise, renders such an amendment of great importance. There are some who regard the entire interstate commerce law as pernicious in its effects, and

who desire its repeal. Indeed, bills have been introduced in congress, one providing for the repeal of the law as a whole, and the other providing for the repeal of the long and short haul and anti-pooling sections. Whatever may be thought of the proposition to repeal the special sections referred to, it is quite unlikely that a majority of either house will consent to the repeal of the law as a whole.

NOTES OF RECENT DECISIONS.

THOSE interested in the subject of "pools," "trusts," "combinations," etc., will find an exhaustive discussion of the law pertaining thereto and a thorough collection of the authorities in the case of Texas & Pacific Ry. Co. v. Southern Pacific Ry. Co., 6 South. Rep. 888, decided by the Supreme Court of Louisiana. There it was declared that all contracts which have a tendency to stifle competition, or to create or foster monopolies, with a view to unreasonably increase the market value of commodities, are against public interest, and contrary to public policy; and hence such contracts can confer to the parties thereto no rights which courts of justice can recognize and enforce. Two railroad companies which have each a through and separate line of communication between two given points, are held to be competing companies for all traffic between such points, and an arrangement by which they agree to divide their earnings for traffic between given points, for which they were previously competitors, is against public interest, contrary to public policy, and cannot be judicially enforced. In disposing of such cases, courts will not decree the nullity of the contract sought to be enforced. They simply abstain from dealing with it, or adjudicating any rights arising thereunder, or giving their aid for the division of results, although ascertained, between the parties thereto. The court says:

We have been at great pains, and have devoted long and tedious labor, to examine all the authorities, consisting mainly of decisions rendered on the point by courts of last resort in this country, which were submitted to us by counsel in the case, and we reach the conclusion that American jurisprudence has firmly settled the doctrine that all contracts which have a palpable tendency to strifle competition, either in the market value of commodities or in the carriage or transportation of such commodities, are contrary to public policy, and are therefore incapable of conferring upon the parties thereto any rights which a court of justice can recognize or enforce. A reference to some of the leading and most pointed authorities on the subject may not be out of place in this opinion, notwithstanding its already formidable length.

In the case of Hooker v. Vandewater, 4 Denio, 349, the court had to consider a contract between the proprietors of several lines of canal-boats, who had agreed to establish fixed rates of freight and passage for a certain season, and to divide the net earnings among themselves according to fixed rules. The attempt of one of the contracting parties to enforce the agreement against a recalcitrant member of the combination was discountenanced. True, the contract fell under the ban of a special statute of the State; but the court nevertheless took occasion to sanction the general principle which underlies our conclusions in this case. The court said: "It is a general proposition that an agreement to do an unlawful act cannot be supported at law—that no right ot action can spring out of an illegal contract; and this rule applies, not only when the contract is expressly illegal, but whenever it is opposed to public policy, or founded on an immoral consideration, the maxim being, *ex turpi causa non oritur actio.*"

In the case of Stanton v. Allen, 5 Denio, 434, the court refused its aid to enforce the payment of a promissory note growing out of transactions predicated on a similar contract, on the ground that such a contract cannot receive judicial sanction. We cull the following language from that opinion: "Though the branch of the law relating to public policy is liable to be misunderstood and extended beyond its proper dimensions, still it must not on that account be neglected or disparaged. The rule that contracts and agreements are void when contrary to public policy, when properly understood and applied, is one of the great preservative principles of a State." And, referring to the case herein previously quoted, the court said: "That decision being conclusive on the main point in the present case, I might have rested upon that authority alone, if I had not supposed that the occasion called for an opinion as to the legality of such an association upon the principles of the common law."

In Ohio an association of salt manufacturers entered in o a combination for the purpose of selling and transporting that commodity. The court refused its aid to enforce its conditions, saying, among other things: "The clear tendency of such an agreement is to establish a monopoly, and to destroy competition in trade; and, for that reason, on grounds of public policy, courts will not aid in its enforcement. It is no answer to say that competition in the salt trade was not in fact destroyed, or that the price of the commodity was not unreasonably advanced. Courts will not stop to inquire as to the degree of injury inflicted upon the public. It is enough to know that the inevitable tendency of such contracts is injurious to the public." Salt Co. v. Guthrie, 35 Ohio St. 666.

The doctrine finds additional support and sanction from the following authorities: Gibbs v. Gas Co., 130 U. S. 408, 9 Sup. Ct. Rep. 553, in which the court took occasion to set down a rule peculiarly applicable to pooling arrangements between competing railroad companies, which are universally recognized and treated in jurisprudence as *quasi* public corporations. The learned chief justice, as the organ of the court, said, with great clearness and terseness: "Hence, while it is justly urged that those rules which say that a given contract is against public policy should not be

arbitrarily extended so as to interfer with freedom of contract, * * * yet, in the instance of business of such character that it presumably cannot be restrained to any extent whatever without prejudice to the public interest, courts decline to enforce or sustain contracts imposing such restraint, however partial, because in contravention of public policy." See, also, Iron Co. v. Extension Co., 129 U. S. 644, 9 Sup. Ct. Rep. 402; Coal Co. v. Coal Co., 68 Pa. St. 173; Arnot v. Coal Co., 68 N. Y. 558; Craft v. McConoughy, 79 Ill. 346; Morrill v. Railroad Co., 55 N. H. 537; Jackson v. McLean, 36 Fed. Rep. 213; Lumber Co. v. Hayes, 18 Pac. Rep. 392; Hamilton's note, 15 Fed. Rep. 667.

We are referred by plaintiff's counsel to several authorities which are quoted as antagonizing the views which we have adopted in this opinion; but we have not found any decision emanating from American courts of last resort which have enforced or recognized any rights flowing from a contract which had a tendency to stifle competition in trade, or in the business of common carriers, or which were, for other or similar reasons, contrary to public policy. The adjudications which have sustained contracts assailed on similar grounds are predicated on facts which remove each particular case from the operation of the rule, for the simple reason that "cases must be judged according to their circumstances, and can only be rightly judged when the reason and grounds of the rule are carefully considered." Navigation Co. v. Winsor, 20 Wall. 64, 68. Under our own system, the doctrine is not only sanctioned by judicial authority, but it has been specially incorporated in our Code, in its wide range of remedies for wrongs in enforcement of rights. Article 1893 reads: "An obligation without a cause, or with a false or unlawful cause, can have no effect." Article 1895 provides: "The cause is unlawful when it is forbidden by law, when it is *contra bonos mores*, [contrary to moral conduct,] or to public order."

In the case of Association v. Berghaus, 13 La. Ann. 209, the principle was formulated thus: "Where a contract belongs to a class which is reprobated by public policy, it will be declared void, although in that particular instance no injury to the public may have resulted."

The case of Association v. Kock, 14 La. Ann. 168, involved an attempt to judicially enforce one of the conditions of an association formed by dealers in bagging, who had agreed not to sell any bagging for the term of three months, without the consent of the majority of the members, under a stipulated penalty. In dismissing the action the court used the following language: "This is a case which ought never to have come before us. The agreement between the parties was palpably and unequivocally a combination in restraint of trade, and to enhance the price in the market of an article of primary necessity to cotton planters. Such combinations are contrary to public order, and cannot be enforced in a court of justice." See, also, Gasscock v. Wells, 23 La. Ann. 516; Cummings v. Saux, 30 La. Ann. 207.

Our ruling on this point is forfeited in a double panoply, furnished by civil as well as common-law authorities.

Plaintiff's counsel, however, make the point that, were they to concede, for the sake of argument, that the contract sued on might be against public policy, yet, in so far as it has been executed, plaintiffs are entitled to recover. The argument is predicated mainly on the fact that from month to month, between November, 1884, and March, 1887, the defendant had executed its obligation under the contract by submitting reports of its earnings, by which it appeared that it was indebted to plaintiff in the sum of $350,717.-78, and that by pleading a peremptory exception the defendant admitted an additional indebtedness on the same basis, of $200,000. A proper understanding of the considerations which underlie our conclusions herein previously announced affords a ready answer to this contention. The rule is that no effect can be given to a contract reprobated by law or contrary to public policy, and hence courts cannot lend their aid even to secure an otherwise fair division of the results of an illegal contract between parties thereto.

In cases like the present, in refusing to enforce the stipulations of a contract which has the palpable tendency to stifle competition, or to create or foster a monopoly, courts will not go to the extent of decreeing the nullity of the contract sued on, but they simply abstain from dealing with it, or from discussing any of its affects as between the parties. On ascertaining that the building is infected with the disease of illegality, the judge simply refuses to enter its portals, and he retires without incurring contact with any of its inmates, and without attempting to examine into or rectify any rights or wrongs which may exist between the inmates of the polluted household. He leaves them quietly where they have placed themselves, and he turns a deaf ear to any equity which one of the parties may invoke against the other. It is on this principle that by far the greater number of the decisions hereinabove quoted were grounded.

In the case of Gibbs v. Gas Co., 130 U. S. 396, 9 Sup. Ct. Rep. 553, the court refused its aid to a party who claimed a stipulated commission for having negotiated a favorable contract for the gas company, on the ground that the contract was illegal. The court expounded the general principle as follows: "The rule of law is of universal operation that none shall, by the aid of a court of justice, obtain the fruits of an unlawful contract." There is no conflict between the law of that case and the legal conclusions announced in the case of Brooks v. Martin, 2 Wall 70, on which plaintiff's counsel mainly ground their hopes of success on this point.

THE new federal statute prohibiting the mailing of a postal card containing matter of a threatening character, has beeen construed by the United States Circuit Court, Eastern District of Missouri, in United States v. Bayle, 40 Fed Rep. 664. It was there held that a postal card demanding payment of a debt, and stating that "if it is not paid at once we shall place the same with our lawyer for collection," is non-mailable matter within the statute, and that a postal card containing the words, "please call and settle account, which is long past due, and for which our collector has called several times, and oblige," is not within the prohibition, as the language cannot be said to be threatening or offensive to the person addressed, or such as to attract public notice. Thayer, J., says:

Section 1 of the act of September 26, 1888, provides "that all matter, otherwise mailable by law, upon the

envelope or outside cover or wrapper of which, or any postal-card upon which, any delineations, epithets, terms, or language, of any indecent, lewd, lascivious, obscene, libelous, scurrrilous, defamatory, or threatening character, or calculated by the terms or manner or style of display, and obviously intended, to reflect injuriously upon the character or conduct of another, may be written or printed, or otherwise impressed or apparent, are hereby declared non-mailable matter, and shall not be conveyed in the mails," etc. If the postal-cards in question are non-mailable, it is because they contain language of a "threatening character," within the meaning of the law, or because they contain language "calculated * * * and obviously intended to reflect injuriously upon the character or conduct" of the person to whom they were addressed. It is clear that they fall within no clause of the statute unless they are within the clauses last referred to. Two of the cards, as it will be observed, contain a demand for the payment of money alleged to be due, and a threat to place the demand in the hands of a lawyer for collection, if not paid at once. The question, therefore, arises whether congress intended to prohibit the mailing of postal-cards containing or on which are written threats of that kind. The language of the statute is very general, and certainly may be construed as a prohibition against mailing postal-cards which contain threats to bring suits if debts are not paid, as well as being a prohibition against mailing cards containing threats of personal violence or threats of any other character. It is most probable, I think, that congress intended the act should receive that construction. It is a well-known fact that prior to the passage of the law some persons had made a practice of enforcing the payment of debts by mailing postal-cards or letters bearing offensive, threatening, or abusive matter, which was open to the inspection of all persons through whose hands such postal-cards or letters happened to pass. In some quarters the practice alluded to of sending communications through the mail that were both calculated and intended to humiliate, and injure the persons addressed in public estimation, had become one of the recogized methods of compelling the payment of debts. Congress evidently intended by the act of September 26, 1888, to utterly suppress the practice in question. It has not only declared that libelous, scurrilous, and defamatory matter written on postal-cards, or on envelopes containing letters, shall not be disseminated through the mails, but that no matter of a "threatening character," or that is even "calculated * * * and * * * intended to reflect injuriously upon character or conduct," shall be so disseminated, if written on postal-cards, or on the envelopes of letters, and hence is open to public inspection. I conclude that a postal-card on which is written a demand for the payment of a debt, and a threat to sue, or to place the demand in the hand of a lawyer for suit, if the debt is not paid, is now non-mailable matter. Henceforth persons writing such demands and threats must inclose them in sealed envelopes, or subject themselves to criminal prosecution. The demurrer to the second and third counts is not well taken, and is therefore overruled as to those counts.

The language employed in the postal-card described in the first count is not of a threatening character, and, in my opinion, no jury would be warranting in finding, in view of its contents, that it was obviously intended by the writer to reflect injuriously on the character or conduct of the person addressed, or to injure or degrade him in the eyes of the public. It is true that it contains a demand for the payment of a debt, and says that it is long past due, and that a collector has called several times; but it is couched in respectful terms, and no intent is apparent to put it in such form as to attract public notice, or to make it offensive to the person addressed. Congress has not declared that postal-cards shall not be used to make such demands, and a construction of the act ought not to be adopted that unnecessarily restrict their use for business purposes. The card in question cannot be held to be non-mailable, without being overcritical and extremely punctilious in the choise of language which men may lawfully use in their transactions.

A NEW question of constitutional law, involving the validity of a statute requiring the payment of wages to laborers in lawful money, came before the Supreme Court of Indiana, in Hancock v. Yaden, 23 N. E. Rep. 253. The decision arrived at in that case strikes an effective blow at mining companies and other corporations in many of the States, whose practice it is to pay their workmen in goods and merchandise. In the above case it was held that Act Indiana 1887, providing that the wages of miners and certain others shall be paid at least once in every two weeks in lawful money of the United States, and Act 1889, declaring unlawful every contract by which the right to receive wages in lawful money at least once in two weeks is waived, are within the power of the legislature to pass and are constitutional. Under such acts a contract made by plaintiff, who was employed by defendants to work in their mine, to the effect that he would receive his wages or any part thereof at the option of defendants in goods from defendants' store, and expressly waived his right to be paid at least once every two weeks in lawful money, is absolutely void, and cannot be pleaded as a bar to an action for wages due the plaintiff. Elliott, J., in an exhaustive opinion, says:

It is sufficiently evident from what we have said that the only question which we can properly consider or decide is whether the antecedent contract was valid, in so far as it assumes to waive the right of the appellee to be paid his wages in lawful money of the United States, and to this question we confine our discussion, and give judgment upon it and no other. Our judgment is that the antecedent contract is entirely void, in so far as it assumes to waive the appellee's right to receive his wages in money. If there were no valid statute prohibiting such a contract, it would be competent for the parties to make it, so that the ultimate judgment of the court hinges upon the question whether there is a valid statute prohibiting such contracts. There is a statute which, in terms, prohibits such contracts, and if it does not vio-

late some provision of the constitution it totally destroys the contract upon which the defense is founded. Elliott, Supp. §§ 1599-1610. Our judgment is that the provisions of the statute forbidding the execution of contracts waiving a right to payment in money is one that the legislature had power to enact. It is a fundamental principle that every member of society surrenders something of his absolute and natural rights in all organized States. Without some yielding of absolute rights, civil government would be impossible. "But every man," says Blackstone, "when he enters into society gives up part of his natural liberty." "Property and law," as Bentham says. "are borne and must die together." The right to dispose of property or labor is a right not wholly surrendered by the citizen, nor yet entirely beyond control by the legislature of the State. The right to contract is an incident of this *jus disponendi*. But the right to contract is not, and never has been in any country where, as in ours, the common law prevails and constitutes the source of all civil law, entirely beyond legislative control. The statute of frauds enables contracting parties to avoid contracts not in writing. The law declares that payment in part of an ascertained debt shall not extinguish it, although the parties agree that it shall do so. Ogborn v. Hoffman, 52 Ind. 439; Smith v. Tyler, 51 Ind. 512; Markel v. Spitler, 28 Ind. 488. A party will not be allowed to contract to waive the benefit of homestead or exemption laws. Maloney v. Newton, 85 Ind. 565; Kneettle v. Newcomb, 22 N. Y. 249; Curtis v. O'Brien, 20 Iowa, 376; Moxley v. Ragan, 10 Bush, 156. A debtor cannot waive stay of execution by contract. McLane v. Elmer, 4 Ind. 239; Develin v. Wood, 2 Ind. 102. By the English law, a seaman cannot by contract waive his right to wages. Kay, Shipm. 626. Parties cannot by contract bind themselves in advance not to resort to the courts for the redress of wrongs. Bauer v. Samson Lodge, 102 Ind. 262, 1 N. E. Rep. 571; Dugan v. Thomas, 79 Me. 221, 9 Atl. 354. A contract providing that a party shall not remove a cause to a federal court is void. Insurance Co. v. Morse, 20 Wall. 455; Doyle v. Insurance Co., 94 U. S. 535. A party will not be allowed to contract without limitation that he will not engage in a particular business. Taylor v. Saurman, 110 Pa. St. 3, 1 Atl. Rep. 40. A statute may require parties to insert in a promissory note the words, "Given for a patent." Herdie v. Roessler, 109 N. Y. 127, 16 N. E. Rep. 198; New v. Walker, 108 Ind. 365, 9 N. E. Rep. 386. Priority in the allowance and payment of claims may be regulated by legislation. U. S. v. Fisher, 2 Cranch, 358. A lien for miners' wages may be made superior to the royalty due to the owners of the mine from the lessees or operators. Warren v. Sohn, 112 Ind. 213, 13 N. E. Rep. 863. Much beyond the doctrine declared in the cases to which we have referred is the ruling in Churchman v. Martin, 54 Ind. 380, wherein it was held that a statute prohibiting parties from contracting to pay attorneys' fees is constitutional. The truth is that, without law as one of its factors, there is really no such thing as a contract. The law is a silent but a ruling factor in every contract. Long v. Straus, 107 Ind. 94, 6 N. E. Rep. 123, 7 N. E. Rep. 763; Canal Co. v. Coal Co., 8 Wall. 276, *vide* page 288.

The case before us affords an example, for where a man upon request, performs services for another, the law implies that he shall be paid for them, and paid in money. It needs no positive agreement to pay in money to entitle a creditor to demand money, for the law decrees that the payment shall be in money. The statutory provision under discussion does no more than enforce this legal right by commanding that men shall not make a contract dispensing with the lawful mode and medium of payment. The authorities to which we have referred, and to which it would be no great task to add others, prove that the law-making power of the State does have authority over the right to contract. That this legislative authority is limited no one doubts, but it is limited only by the constitution. In that instrument are found the only limitations upon the law-making power of the State. Hedderich v. State, 101 Ind. 564, 1 N. E. Rep. 47; McComas v. Krug, 81 Ind. 327: Beauchamp v. State, 6 Blackf. 299. But no limitation in that instrument so operates as to prevent the law-making power from prohibiting classes of citizens from contracting in advance that the wages of miners shall not be paid in lawful money of the United States. It would be not only unnecessary, but improper, to enter upon the work of ascertaining to what extent the constitution restrains the legislature from regulating or restricting the right to contract; for all that can with propriety be here decided is that it does not restrain the legislature from enacting laws which operate to maintain or protect the medium of payment established by the sovereign power of the nation. It cannot be denied, without repudiating all authority, that the legislature does possess some power over the right to contract, and if it does, then nothing can be clearer than that this power extends far enough to uphold a statute providing that payment of wages shall be made in money where there is no agreement to the contrary made after the services have been rendered. Whether the legislature may absolutely declare that nothing shall be payment but money we need not inquire, for all that is important here is to decide that it may prohibit a contract from being made in advance waiving the right to payment in what the law says shall be medium of payment. We cannot conceive a case in which the assertion of the legislative power to regulate contracts has a sounder foundation than it has in this instance, for here the regulation consists in prohibiting men from contracting in advance to accept payment in something other than the lawful money of the country for the wages they may earn in the future. It is of the deepest and gravest importance to the government that it should unyieldingly maintain the right to protect the money which it makes the standard of value throughout the country. The surrender of this right might put in peril the existence of the nation itself. Suppose that in the years of the war, when gold was worth such an extraordinary premium, the owners of supplies required by the government had, by concerted action, refused to accept anything in payment but coin, would the nation have been powerless to protect what it had decreed should be money? Or, again, suppose that to persons holding the needed supplies had refused to take anything but property in exchange, and that it was impossible to procure the species of property demanded, would the government have been helplessly at their mercy? The protection from such evils is in the right to establish and maintain by coercive measures, if need be, what by the law is made money of the nation. We do not use these illustrations or more than their worth. We employ them simply to show the imperious necessity that exists for the retention, in its unbroken entirety, of the power to established and maintain a standard of value. What is necessary to national or State life the government possesses, and it is for the legislature to judge what measures are essential to the complete and effective exercise of a power which it possesses. It is not simply the government, as a government, that is interested in the power to establish and main-

tain a standard of value; for to every citizen engaged in any business of life it is of vital importance that there should be a fixed and unchanging standard. Without it, business, except of the most meager kind, would be at an end, and commerce would be practically annihilated.

The decisions of the highest tribunals of the country go very far to sustain our conclusions. It is the law, as that court has declared it in able opinions, that the government has a right to provide a currency for the whole country, and to drive out all other circulating mediums, by taxation or otherwise. Bank v. Fenno, 8 Wall. 533. This was asserted by Chief Justice Chase, speaking for the majority of the court although he, and the majority of the court as it was then constituted, did not go so far upon other phases of the case as the court did go in the subsequent case, which now stands as declarative of the law of the land. Legal Tender Case, 12 Wall. 557. In Hepburn v. Griswold, 8 Wall. 603, a different view was taken upon some phases of the general question from that declare in the Legal Tender Cases, *supra*, but not upon the proposition we have stated. The power to establish necessarily implies the power to maintain. U. S. v. Fisher, 2 Cranch, 358; McCulloch v. Maryland, 4 Wheat. 416; U. S. v. Marigold, 9 How. 560. It is for the legislature to judge what means are necessary and appropriate to accomplish an end which the constitution makes legitimate. It is therefore competent for the legislative branch of the government to devise and establish such rules as in its judgment will best protect the standard of value which its laws have fixed. The rule to which we have referred is a familiar one, but it has been so admirably stated by Mr. Justice Bradley that we may be pardoned for quoting his language. Replying to an objection pressed by counsel, he said: "The answer is, the legislative department, being the nation itself, speaking by its representatives, has a choice of methods, and is master of its own discretion." Legal Tender Cases, *supra*, *vide* page 561.

The power exercised by the legislative department in fixing the standard of value closely resembles that by which the standard of weights and measures is established and maintained. In truth, there is no difference in the inherent nature of the powers; the difference is in the subject-matter to which they are applied, rather than in the powers themselves. The power of the State extends so far as to enable it to declare and enforce penalties against persons who violate the law regulating the standard of weights and measures of the standard of values. It is upon the theory that matters connected with the regulation of the standard of values are within the legislative power that statutes defining and punishing usury are sustained. It is true, we know, that the federal congress is the proper authority to regulate the standard of values, but it does not follow from this that a State may not do what it can to prevent the debasement of the standard fixed by congress. It can, of course, neither lower that standard, nor pass laws hostile to those enacted by congress, but it may support the efforts of of the national legislature, as far, at least, as it is within the power of a State to do so. The principle which rules this phase of the subject is closely analogous to that established by the decisions assuming the right of the State to proscribe as a felon one who counterfeits the national money. Dashing v. State, 78 Ind. 358; Snoddy v. Howard, 51 Ind. 411; Chess v. 1 Blackf. 198; Fox v. State, 5 How. 410; U. S. v. Field, 16 Fed. Rep. 778.

The provision of the statute to which our decision is directed operates upon all members of the classes it enumerates. It neither confers special privileges, nor makes unjust discriminations. All who are members of the classes named are entitled to its benefits or subjected to its burdens. It is open to every citizen to become a member of any of the classes designated, and the privileges conferred belong on equal terms to all. Johns v. State, 78 Ind. 332; McAunich v. Railroad Co., 20 Iowa, 338. It denies no privileges to any one, for it leaves it free to every citizen to become a member of the classes specified and it operates alike upon all who enter those classes. The statute operates upon both the employer and the employee. It may, it is true, in its practical operation benefit the wage-earner, but that is no fault. At all events, the fault is not such a generous one as to compel the courts to strike it down. It fixes no price upon any man's labor. It leaves the parties to do that, but it does require them to refrain from contracting before the relation of employer and employee begins for payment in anything except the lawful money of the United States. It does not preclude parties from making an accord and satisfaction after wages have been earned and services rendered, although it does command that the antecedent contract shall not provide that payment may be made in something other than lawful money of the nation.

THE ELEMENT OF TIME IN CONTRACTS FOR THE SALE OF CHATTELS.

What is meant by the "essence of the contract" and when is time of the essence? These questions indicate the scope of the following brief statement of rules and references to authority. There are few questions more perplexing, and less susceptible of satisfactory answer by the aid of general rules. Like questions relating to disseisin, fixtures to real estate and many others that might be mentioned, it is impossible to lay down fixed and certain rules for their determination. As the decision of such questions must depend upon the real intention of the parties, where it is made to appear, and as such intention is so often to be collected from the terms of the agreement and the circumstances of each particular case, it follows that fixed rules must necessarily have a limited application.

If not contrary to public policy it is, of course, entirely competent for parties to agree upon what shall be the effect of noncompliance with any of the stipulations of their contracts. They may agree that the time of performance shall be treated as essential and the courts will uphold and enforce any clearly expressed intention to that effect.[1] But in the absence of such agreement, some general rules may be usefully applied. It is said

[1] Heckard v. Sayre, 34 Ill. 142.

that there is no reason for viewing the stipulations in regard to the time of performance of any act, in any different way from any other stipulations of the contract. What the parties have agreed upon with reference to the time of performance has as much binding force as any other article of their agreement. Everything is material that forms a part of the contract.[2] Some of the early cases in equity, particularly of sales of land in which the doctrine was announced that time is not of the essence of the contract, seemed to treat as immaterial the covenants in regard to time. But these cases are not in accord with the modern decisions.[3] But however material, time is not always of the essence. The term "essence" although frequently employed in the decisions, has not often been defined.

It is said by Lord Erskine that time is of the essence of a contract "when it is a material object to which they—the parties—looked in the first conception of it."[4] It is defined in Sweet's Law Dictionary as follows: "A provision in a contract is said to be of the essence of the contract, when compliance with it was known by both parties at the time of entering into the contract, to be of such importance, that performance of the contract without strict compliance with it may be of no avail." The etymology of the word affords a hint of its legal meaning. If time is of the "essence" of the contract, it is that without which the contract would not be, that upon which it depends for its further existence, and accordingly it may be said that time is of the essence when the stipulation with reference thereto constitutes a condition, either precedent or subsequent to the other covenants of the contract.[5]

When the contract is such that the stipulation in regard to the time of doing any act and the other stipulations are to be mutually and concurrently fulfilled, a performance, or a readiness and willingness to perform on one side, will constitute a condition precedent to performance on the other; and time in such a case will be of the essence of the contract.[6]

[2] O'Donnell v. Leman, 43 Me. 158; Cromwell v. Wilkinson, 18 Ind. 365.

[3] Taylor v. Longworth, 14 Pet. 172; Stowe v. Russell, 36 Ill. 18; Barnard v. Lee, 97 Mass. 92.

[4] 13 Ves. 289.

[5] 1 Addison on Contracts, p. 306.

Another rule established as early as the old case of Pordage v. Cole[7] is clearly stated and applied by Lord Mansfield in Boone v. Eyre,[8] where mutual covenants go the whole of the consideration on both sides, they are mutual conditions, the one precedent to the other. But where they go only to a part, where a breach may be paid for in damages, there the defendant has a remedy on his covenant and shall not plead it as a condition precedent. It is often true, however, that a provision in a contract may be treated as a condition precedent, although not going to the whole consideration, especially where it is one of mutual obligations to be concurrently fulfilled.[9]

Accordingly upon the sale of chattels, it has been held that where the sale is one of things of quantity generally, and no right of property in the things agreed to be sold passes by the bargain from the vendor to the purchaser, time will in general be of the essence of the contract, so long as the contract remains executory, and the purchaser will not be bound to accept and pay for the goods, if they are not tendered on the day specified.[10] But if the sale is one of specific ascertained chattels, and the ownership and right of property in the goods have been transferred by the bargain to the purchaser, time is not of the essence of the contract, and the vendor cannot repudiate the sale and revest the right of property in himself and refuse to deliver the goods at a subsequent period on tender of the price, on the ground of the non-payment thereof at the time appointed, or the non-performance of any other covenant, unless the sale by express agreement has been made conditional on payment at the time named or the performance within the period allowed of any other covenant of the agreement.[11] In Martindale v. Smith,[12] where the subject is considered, the facts were that defendant sold plaintiff certain stacks of oats then on defendant's grounds,

[6] Campbell v. Gittings, 19 Ohio, 347; Pickering v. Greenwood, 114 Mass. 479.

[7] 1 Wms. Saund. 310.

[8] 1 H. Bl. 273.

[9] Norrington v. Wright, 115 U. S. 188; Tobias v. Lissberger, 105 N. Y. 404.

[10] Gath v. Secs, 3 H. & C. 558; Chinnery v. Vail, 29 L. J. Ex. 180.

[11] Martindale v. Smith, 1 Q. B. 395; 2 Addison on Contracts, p. 939.

[12] *Supra*.

under a written agreement by which plaintiff was to have liberty to leave the stacks on the ground for four months and to pay for them in twelve weeks from date of agreement. Defendant at the end of twelve weeks called on plaintiff to pay, which he did not do. After the expiration of twelve weeks plaintiff tendered payment which defendant refused to accept. Afterwards defendant sold the stacks. It was held in an action for conversion that plaintiff was entitled to recover. In this case, and with reference no doubt to contracts of sale where the right of property in the subject-matter has passed by the bargain to the purchaser, Denman, C. J., says, "In a sale of chattels time is not of the essence of the contract unless it is made so by express agreement, than which nothing can be easier, by introducing conditional words into the bargain."

Perhaps the reason underlying these rules may be found in the policy of the law which regards a just compensation as the true measure of damages for breach of contract. The damages sustained by the parties would generally be unequal, if a covenant in a contract partly executed were treated as a condition and one of the parties allowed to repudiate the whole for the non-performance of any part, but so long as the contract remains wholly executory, a refusal to perform on one side may fairly be considered nothing more than just redress for failure on the other. There is a class of cases, however, involving the construction of certain contracts for the sale of standing timber, which in some States have resulted in establishing an exception to the rules above referred to. If such exception rests upon reasonable grounds it may be applicable to a much larger class of cases, and it seems proper in this connection to examine at some length into the reasons upon which it is based. A case for example is this: A party contracts with another for the sale of a certain ascertained quantity of standing timber. The vendor is the owner of the land upon which the timber is situated, the purchase money is paid in full, and in the written contract of sale the vendee is given a certain definite time within which to remove the same; the language of the contract is: "and the said vendee is to have six months from the date hereof in which to remove the said timber." Without sufficient excuse the vendee fails to remove all his timber within the time limited. A part of that remaining upon the land when the time expires is still uncut. At the expiration of the time stated the vendor and land owner forbids the vendee to enter or remove or cut any of the remaining timber. What are the rights of the parties? There is a line of cases growing out of transactions in the lumber regions of Maine, Vermont, and some other States, in which it is held that the vendee has no remedy upon such a state of facts. The stipulation with reference to the time of removing the timber is held to be of the essence of the contract, and non-compliance therewith on the part of the purchaser puts an end to his rights. The theory is, that the timber continues to be the property of the purchaser up to the running out of the time, and then by its non-removal it becomes forfeited and passes to the vendor.[13]

Now it is certain that such a construction is not in accordance with the rule laid down in Martindale v. Smith.[14] The property is ascertained and the purchase money therefor is paid in full. There is nothing to show that it was the intention of the parties that by the vendee's neglect to remove the timber it should be forfeited to the vendor. Such a purpose is not contained in any part of the language of the contract for it nowhere says that in any event the title to the timber is to revert to the vendor. If it is not in the words of the contract such a right must be derived by inference from the nature of the transaction itself. What is there, then, in the nature of the transaction to have such an effect? The feature of the case, which has thus lead the courts to depart from the general rule, lies no doubt in the circumstance that, if the timber was permitted to remain on the premises until the time of removal had expired, it became unlawful to enter for the purpose of taking it away. There can be no question that an entry after the time would be unlawful, and the right of the owner of land to resist an unlawful entry is among the primary rights of property. It cannot be supposed

[13] Pease v. Gibson, 6 Me. 84; Howard v. Lincoln, 13 Me. 122; Holton v. Goodrich, 35 Vt. 19; McIntyre v. Barnard, 1 Sandf. Ch. 52; Warren v. Leland, 2 Barb. 622; Boisanbin v. Reed, 1 Abb. Ct. Dec. 161, and cases cited in the above.

[14] *Supra.*

that the license to enter and remove the property implied from the sale of it is paramount to the expressed contract of the parties. They have agreed upon a time during which an entry by the purchaser may be made. Beyond that time the license does not extend and an entry thereafter is unlawful. What effect does this have upon the rights of the purchaser, who, if the title to the timber is not made conditional by the contract, as it cannot be upon any just construction, is now the owner of property upon the land of another upon which, if he enters, he becomes a trespasser? If the result is a practical forfeiture of the property the legal rules permitting it are surely open to the charge of being inflexible and harsh and incapable of effecting justice in many cases. It is true that the owner of land has a perfect legal right to resist an unlawful invasion of his premises, and the maxim is said to apply, that "he is not to be esteemed a wrong-doer who merely avails himself of his legal rights.[15] In the case of Irons v. Webb[16] the court very clearly shows that a construction of such a contract which makes the title to the timber conditional upon its being removed within the time, is contrary to the intention of the parties; but the circumstances of that case were not such as to require a solution of the difficulty where the vendor is asserting his legal right to resist an unlawful entry. There the vendor, after the time, had converted the property to his own use, and the court held him liable for the value of it.

Cases under the law of recaption throw some light upon the subject. Judge Cooley in his Treatise on Torts has discussed the law applicable to the various circumstances under which one's goods may be upon the premises of another. At page 52 he says: "If a third party shall take the property of one and place it upon the land of another, without the consent or co-operation of either, while the latter, perhaps, might forbid the entry of the owner to remove it, and hold him a trespasser if he should persist in doing so, yet, in that case, he would be under obligation to restore it on demand, and the owner might proceed by replevin to take it on his refusal." But in the case supposed the purchaser might be considered a wrong-doer in leaving his property upon the land of the vendor after the time for taking it away. In such case he says, page 52: "But if the owner is himself a wrong-doer in leaving his property upon another's land, he must take the consequences of his unlawful act, and cannot, by an unlawful entry, acquire a right to make one that shall be lawful." What these "consequences" are, we are not told. If they are a forfeiture of the property, the rule is a very harsh one, and cases might be put showing that it would lead to startling results. If the consequences are that an entry by the owner would be unlawful, they are no more than in the case first mentioned by Judge Cooley, as the obligation to restore is surely not absolute. The case he mentions, where the property of one is on the land of another, without the consent of either, is apparently of such property as could be readily delivered up to the owner, and where a refusal to do so might be properly held an unlawful definition of it. But suppose the property is bulky, such as the timber here, and the owner of the land would sustain damages from what was necessarily done to regain it, or be put to great expense to restore it to the owner, under such circumstances would the owner of the land be under obligation to restore it on demand? If there was no obligation to restore there could be no unlawful detention by mere failure to do so.

It has been said that the land owner has a legal right to resist an unlawful entry, and that it is a very ancient maxim that "he is not to be esteemed a wrong-doer who merely avails himself of his legal rights." But it is submitted that this is one of the many cases where maxims are misapplied. Judge Elliott in his "Work of the Advocate" well says: "Maxims are legal proverbs. But maxims like proverbs will not fit all cases. The underlying fallacy of the process by which a disputant endeavors to apply a maxim to every resembling case is that of undue assumption, for in every such process it is tacitly assumed that the maxim is universal, when in fact it is no more than the embodiment of a general rule, subject for the most part to many exceptions."[17] The assumption here is that the land owner does

[15] Broom's Leg. Max. p. 131.
[16] 12 Vroom. (N. J.) 203.
[17] p. 548-9.

nothing more than avail himself of his legal rights, or that the maxim is so far without exception that it applies without regard to the effect of such assertion upon the equal rights of others; whereas it may be urged with the same logical propriety, and with greater justice, that "a man must enjoy his own property in such a manner as not to invade the legal rights of his neighbor," and that while the land owner has a right to resist an unlawful entry, yet when the exercise of that right results in depriving another of the use of his property, he then becomes a wrong-doer. Which of these maxims shall apply? And here the same author has remarked: "There is no touchstone by which the applicability of maxims to a particular case may be tried. The surest means that a man can take to reach a sound conclusion in such a matter, is to consider and determine what will secure equity and justice."[18] Put to the test of doing equity and justice in the great majority of cases, surely that construction would be rejected, which in the absence of express agreement would allow one party to a contract to repudiate the whole for the non-performance by the other of any single covenant, the fulfillment of which is by the terms of their agreement postponed to mutual part-performance of the contract.

The soundness of the decisions referred to has been questioned in some later cases,[19] and it is probable that in jurisdictions where the point is undetermined, the class of contracts mentioned would be held to constitute no exception to the general rule.

C. R. PENCE.

Kansas City, Mo.

[18] p. 550.

[19] Holt v. Stratton Mills, 54 N. H. 109; Irons v. Webb, 12 Vroom (N. J.) 203; Haflin v. Bingham, 56 Ala. 566.

GIFTS—SAVINGS BANK DEPOSIT.

BEAVER V BEAVER.

Court of Appeals of New York, November 26, 1889.

1. A father deposited money of his own in a savings bank, to the credit of his infant son. The son died sixteen years after reaching his majority, without any knowledge of the deposit. The father always retained possession of the pass-book, and on one occasion drew from the account, and receipted therefor in his own name: *Held*, that it did not constitute a gift, as it did not show an intent to give, and there was no delivery.

2. A trust cannot be implied from a mere deposit in a bank by one person of his own money in the name of another.

The action was commenced by the plaintiff, as executrix of Asiel G. Beaver, against the Ulster County Savings Institution, to recover certain deposits amounting to the sum of $2,800 or thereabouts, standing to his credit on the books of the bank. The administrators of John O. Beaver claiming the money as part of his estate, they were substituted as defendants in place of the bank, the money having been brought into court. The question litigated was whether the money represented by the deposits and the accumulations had been vested in Asiel G. Beaver, as a gift from John O. Beaver. The account with the bank consisted of two deposits—one July 5, 1866, of $854.04, and one of October 5, 1866, of $145.96—making in the aggregate $1,000, and the accumulations thereon. It is undisputed that the deposit of $854.04 was made in person by John O. Beaver, and that the money deposited belonged to him. The only evidence to sustain the claim that it was given by him to Asiel G. Beaver is found in the relation between them and the circumstances attending the deposit. Asiel G. Beaver was the son of John O. Beaver, and in 1866 was seventeen years of age, and resided with his father, as one of a family of thirteen children. John O. Beaver made the deposit of July 5, 1866, in the name of Asiel. The rules of the bank required that on making the first deposit the depositor should subscribe a declaration of his assent to the by-laws of the institution, and his promise to abide by them. John O. Beaver, at the date of the first deposit, signed in his own name a declaration presented to him by the treasurer of the bank, commencing with the words: "I, Asiel G. Beaver, of Esopus, Ulster county, hereby request the officers of the Ulster County Savings Institution to receive from me $854, and open an account with me," etc. At the same time the savings bank entered on its books an account beginning "Dr., Ulster County Savings Bank, in account with Asiel Beaver," and crediting said Asiel with the deposit of $854. Under the name of Asiel Beaver were originally written the words, "Payable to John O. Beaver." The bank also at the same time issued and delivered to John O. Beaver a pass-book, with a similar entry as in the account on the books of the bank, containing also, as originally written, the words, "Payable to John O. Beaver." These words in the account and in the pass-book were in the handwriting of the treasurer of the bank, and were written at the same time and by the same hand as the other part of the entries. But before the delivery of the pass-book the words "Payable to John O. Beaver" were erased therefrom, and the same erasure was made in the account on the bank-books. How the interlineation came to be made in the first

instance does not appear, nor does it appear at whose suggestion or under what circumstances the erasures were made. Subsequently, on October 5, 1866, another deposit of $145.96 was made to the account, and credited on the pass-book.

There are no facts, except as above stated, tending to show a gift of the money deposited to Asiel. On the other hand, many circumstances were shown which are claimed to be inconsistent with a gift by the father to the son of the money deposited. The son married a few years after the deposit was made, and died in 1886, twenty years after the date of the deposits, being then of the age of thirty-seven years, leaving a wife, but no children, surviving. John O. Beaver, the father, died in 1888. The father retained possession of the pass-book at all times until his death. In April, 1867, he drew 27.29 from the account, and signed a receipt therefor in the pass-book in his own name. No other sum was ever drawn from the account. From time to time John O. Beaver presented the pass-book to the bank to have the interest credited, and the bank officers had no dealings with any other person in respect to the account. There is no evidence that Asiel G. Beaver ever had the pass-book in his possession, or knew of the deposits. In May, 1870, Asiel opened an individual account at the bank in his own name, which continued until March, 1886, when he drew out $1,818.56, in full of the account. It appears that John O. Beaver had eight or nine pass-books in the bank, representing deposits made in the names of other persons. He left at his death real estate of the value of $12,000 to $15,000, and more than $20,000 in personal property. One of the rules of the bank provides that "drafts may be made personally, or by the order in writing of the depositor (if the institution have the signature of the party), or by letters of attorney, duly authenticated, but no person shall have the right to demand any part of his principal or interest without producing the original book, that such payment may be entered thereon," and another declares that, "although the institution will endeavor to prevent fraud or impositions, yet all payments to persons presenting the pass-books issued by it shall be valid payments to discharge the institution." The rules were printed on the pass-books of the bank.

Andrews, J. *(after stating the facts as above.)* It is found that the money with which John O. Beaver made the deposit of $854.04, July 5, 1866, belonged to him. The inference that the deposit of $145.96, made October 5, 1866, was also made by him, from his own means, does not admit of reasonable question. The pass-book was at all times in his possession. Concurrently with the last deposit the amount was entered therein. It is affirmatively shown that Asiel, who was then a minor, lived with his father, and had no money of his own, and the circumstances are quite satisfactory to show that he never at any time during his life knew of the bank account. The question n the case turns upon the legal effect of the deposit, made in connection with the attendant and subsequent circumstances. If they established either a trust in favor of Asiel as to the $854.04, deposited July 5, 1866, or a gift of the fund deposited, then, clearly, the subsequent deposit would, in the absence of explanation, be impressed with the same character, and be governed by the same rules. On the other hand, if the first deposit was not affected with any trust, and was not a gift, neither is the last one. Both were the property of John O. Beaver, or both the property of the son, either by a beneficial or legal title. The trial court seem to have sustained the transaction as a gift, but at the same time refused to find that there was no trust.

There is no warrant, under the decisions of this court, to uphold the deposit of July 5, 1866, as a trust. The case of Martin v. Funk, 75 N. Y. 134, estalished a trust in favor of the claimant in that case, in respect to a fund deposited by another in a savings bank to his own credit, in trust for the former; the latter taking from the bank at the time a pass-book in which the account was entered in the same way. The court applied the doctrine that the owner of a fund may, by an unequivocal declaration of trust, impress it with a trust character, and thereby convert his absolute legal title into a title as trustee for the person in whose favor the trust is declared. There was no declaration of trust in this case, in terms, when the deposit of July 5, 1866, was made, nor at any time afterwards, and none can be implied from a mere deposit by one person in the name of another. To constitute a trust there must be either an explicit declaration of trust, or circumstances which show beyond reasonable doubt that a trust was intended to be created. It would introduce a dangerous instability of titles if anything less was required, or if a voluntary trust *inter vivos* could be established in the absence of express words, by circumstances capable of another construction, or consistent with a different intention. See Young v. Young, 80 N. Y. 438, and cases cited.

The plaintiff's title to the fund must depend, therefore, upon the question of gift. The elements necessary to constitute a valid gift are well understood, and are not the subject of dispute. There must be on the part of the donor an intent to give, and a delivery of the thing given, to or for the donee, in pursuance of such intent, and on the part of the donee acceptance. The subject of the gift may be chattels, choses in action or any form of personal property, and what constitutes a delivery may depend on the nature and situation of the thing given. The delivery may be symbolical or actual, by actually transferring the manual custody of the chattel to the donee, or giving to him the symbol which represents possession. In case of bonds, notes, or choses in action, the delivery of the instrument which represents the debt is a gift of the debt, if that is the intention; and so, also, where the debt is that of the donee, it may be given, as has been held by the delivery of

a receipt acknowledging payment. Westerlo v. De Witt, 36 N. Y. 340; Gray v. Barton, 55 N. Y. 72; 2 Schouler, Pers. Prop. § 66 *et seq.* The acceptance also may be implied where the gift, otherwise complete, is beneficial to the donee. But delivery by the donor, either actual or constructive, operating to divest the donor, of possession of and dominion of the thing, is a constant and essential factor in every transaction which takes effect as a complete gift. Anything short of this strips it of the quality of completeness which distinguishes an intention to give, which alone amounts to nothing, from the consummated act, which changes the title. The intention to give is often established by most satisfactory evidence, although the gift fails. Instruments may be even so formally executed by the donor, purporting to transfer title to the donee, or there may be the most explicit declaration of an intention to give, or of an actual present gift, yet, unless there is delivery, the intention is defeated. Several cases of this kind have been recently considered by this court. Young v. Young, *supra;* Jackson v. Railway Co., 88 N. Y. 520; *In re* Crawford, 113 N. Y. 560, 21 N. E. Rep. 692.

We are of opinion that there is lacking in this case two of the essential elements to constitute a gift by John O. Beaver to his son of the money deposited July 5, 1866, viz., an intent to give, and a delivery of the subject of the alleged gift. The only evidence relied upon to establish an intent on the part of the father to make a gift to his son is the transaction at the bank on the day the deposit was made, in connection with the relation between the parties. There is no proof of any oral statement made by the father on that occasion disclosing an intention to make a gift, and not a *scintilla* of evidence that afterwards, during the 20 years which elapsed before the son's death, the father made any declaration or in any way recognized that the money belonged to the son, or had been given to him. Evidence offered on the part of the defendant of declarations of John O. Beaver, made on the day of the deposit and afterwards, inconsistent with the theory of an intent to give the money to Asiel, were excluded, on the objection of the plaintiff. The acts of John O. Beaver after the account was opened tend strongly to negative the claim that the money was deposited with intent to give it to the son. The drawing out of the interest by John O. Beaver on one occasion; his retention of the pass-book for 22 years, and procuring it to be written up from time to time; the fact that the son, so far as appears, never was informed of the existence of the account,—are strong indications that John O. Beaver did not make the deposit in the son's name with intent to make a present gift of the money. The father dealt with the account as his own, and, if the control he exercised over it during the minority of Asiel could be reasonable explained on the theory that he acted as the natural guardian of the son, no such explanation is possible as to the 16 years of the life of the son after he reached his majority.

The trial court having found that there was a consummated gift, which of course, includes a finding of an intent to give, this court is concluded from reviewing the finding, if there was any competent and sufficient evidence to support it. The form of the account is the essential fact upon which the plaintiff relies. It may be justly said that a deposit in a savings bank by one person, of his own money to the credit of another, is consistent with an intent on the part of the depositor to give the money to the other. But it does not, we think, of itself, without more, authorize an affirmative finding that the deposit was made with that intent, when the deposit was a new account, unaccompanied by any declaration of intention, and the depositor received at the time a pass-book, the possession and presentation of which, by the rules of the bank, known to the depositor, is made the evidence of the right to draw the deposit. We cannot close our eyes to the well-known practice of persons depositing in savings banks money to the credit of real or fictitious persons with no intention of devesting themselves of ownership. It is attributable to various reasons,—reasons connected with taxation, rules of the bank limiting the amount which any one individual may keep on deposit the desire to obtain high rates of interest where there is a discrimination based on the amount of deposits, and the desire on the part of many persons to veil or conceal from others the knowledge of their pecuniary condition. In most cases where a deposit of this character is made as a gift, there are contemporaneous facts or subsequence declarations by which the intention can be established, independently of the form of the deposite. We are inclined to think that to infer a gift from the form of the deposit alone would, in the great majority of cases, and especially where the deposit was of any considerable amount, impute an intention which never existed, and defeat the real purpose of the depositor. The relation of father and son does not in this case, we think, strengthen the plaintiff's case. It may be true that, as between parent and child, a presumption of a gift may be raised from circumstances where it would not be implied between strangers. Ridgway v. English, 22 N. J. Law, 409. But where a deposit is made in the name of another, without any intention on the part of the depositor to part with his title, he would be quite likely to select a member of his own family to represent the account, and in this case this is the natural explanation of the transaction.

The circumstances of the *erasure* in the declaration signed by John O. Beaver, and also in the account on the books of the bank, of the words, "Payable to John O. Beaver," throw no light upon the actual intention. If they were originally inserted at the suggestion of John O. Beaver, it would seem to imply that when he came to make the deposit he did not intend to part with

the control of the money, and it is scarcely presumable that he changed his intention at the very time of making the deposit. If the words were inserted by the treasurer without authority, he may have erased them so as to leave no evidence of an intent to evade the law or the rules of the bank in respect to deposits, or he may have done it for some other unexplained reason. Again, it is possible that John O. Beaver desired that the fund should be placed so that it could be drawn on presentation of the pass-book, without the necessity of a written order, and the *erasure* was made for this reason. In short, the reason for the insertion of the words, and the subsequent *erasure*, is matter of speculation merely, and does not aid in the interpretation of the main transaction. There was not only a failure to prove an intent on the part of John O. Beaver to make a gift, but the case is, we think, equally defective on the proof of delivery. The declaration and request drawn by the treasurer ran in the name of Asiel, as did the promise recited to abide by the rules of the bank. But it was signed by John O. Beaver in his own name, and not as agent for Asiel, and in law was his request and his promise. John O. Beaver took and retained possession of the pass-book on which the rules were printed. The rules prescribed the undertaking of the bank, and the conditions to be observed by depositors in requiring payment. Under these rules, John O. Beaver had the exclusive dominion over the account, and the exclusive right to draw upon it so long as he retained the pass-book. It was his signature that the bank had, and not that of Asiel, and the rule authorizing drafts by the depositor only applies when the bank has his signature. But the rule also prescribed that "no person shall have the right to demand any part of his principal or interest without producing the original book, that such payments may be entered thereon," and also that "all payments to persons producing the pass-books shall be valid payments to discharge the institution." Under these rules, Asiel was never in a situation to control the account, while John O. Beaver had complete authority over the fund at all times. If John O. Beaver had delivered the pass-book to Asiel with intent to give him the deposit, there would have been a constructive delivery of the subject of the gift. *In re* Crawford, *supra*. But he never did this, or any equivalent act.

We think, for the reasons stated, that the plaintiff failed to establish a gift, or to justify a finding of a gift. The question of gifts, in connection with deposits in savings banks, has of late years been frequently considered by the courts in various States. The preponderance of authority seems to be in favor of the views we have expressed. See Robinson v. Ring, 72 Me. 140; Burton v. Bank, 52 Conn. 398; Marcy v. Amazeen, 61 N. H. 131; Schick v. Grote, 42 N. J. Eq. 352, 7 Atl. Rep. 925; Scott v. Bank, 140 Mass. 157, 2 N. E. Rep. 925; 8 Amer. & Eng. Cyclop. Law, tit. "Gifts," and notes. The cases of Howard v. Bank, 40 Vt. 597; Blasdel v. Locke, 52 N. H. 238; Gardner v. Merritt, 31 Md. 78,—go the furthest towards sustaining transactions, similar to the one in question, as gifts, of any we have noticed, but they are distinguishable in material respects from this. Our conclusion is that the cause of action in this case was not made out, and the judgment should therefore be reversed, and a new trial ordered. All concur, except Danforth, J., dissenting, and Finch, J., not voting.

NOTE.—*Savings Bank Deposits in Another's Name.*—The foregoing case is notable for its discussion of the doctrines concerning savings banks deposits in another's name, which have been the subject of divergent decisions, and for its application of such doctrines to a peculiar state of circumstances. It is also interesting for its statement of the general requisites of gifts.[1] Whatever view may be taken of the facts of the case, and of the correctness of the decision as based thereon, there would seem to be no room for question that the opinion properly presents the purely legal aspects of the matter under consideration. The governing doctrine invoked appears to be in accord with the general current of authority.

As the law upon the subject has been recently developed, without reference, however, to knowledge or assent on the part of the donee, where a person deposits money in a bank in another's name, but subject to his own order, and retains the pass-book and control of the funds, he does not thereby make a gift *inter vivos* nor create a trust.[2] There was, however, properly considered to be a clear trust in the first instance, and afterwards a complete gift in a case when the money was deposited in the names of four grandchildren, with the statement by the depositor that she wanted to "do something for the children," and other expressions of her intention to let the money accumulate for them until they became of age, but the pass-books were made subject to the depositor's order during her life-time; and afterwards she had this entry erased in conformity to her expressed wish to give the grandchildren the absolute property and full control, of which change she notified one of her grandchildren, who had also been informed of the previous arrangement.[3]

Creation of Trust.—The difficulty in cases where deposits have been made by one in his own name as trustee for another, is rather in the application of the law to the facts than in the principles which should govern.[4] In general, it is enough for the purpose of making a party trustee for the benefit of another if it

[1] Concerning gifts in general, see further, article on "Recent Law of Gifts," 28 Cent. L. J. 400; also Appeal of Walsh, 122 Pa. St. 177, 9 Am. St. Rep. 83, and note, 87.

[2] Marcy v. Amazeen, 61 N. H. 131, 60 Am. Rep. 320, 321. See, as to like effect as the annotated case on this matter, the case of Robinson v. Ring, 72 Me. 140, 39 Am. Rep. 308, also therein cited, where the deposit was made in the name of a brother, but the deposit book was retained, and there was no evidence of any contemporaneous or subsequent declaration of trust; and Pope v. Burlington Sav. Bank, 56 Vt. 284, 48 Am. Rep. 781, where money was deposited in the name of a grandchild, but was made solely to the depositor during his life, and he retained the pass-book and had absolute control of the deposit, while the grandchild was neither a party to the transaction, nor had any knowledge thereof.

[3] Bonher v. Frye. 75 Me. 29, 32, *et seq.*

[4] Alger v. North End Savings Bank, 146 Mass. 418, 3 Am. St. Rep. 331, 332.

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be unequivocally declared in writing, or orally, if the property be personal, that it is held in trust for the person named;[5] and when the trust is thus created, it is effectual to transfer the beneficial interest, and operates as a gift perfected by delivery.[6] But a new declaration of trust by the owner, not communicated to the donee and assented to by him, or a mere deposit of the fund in his own name as trustee, or a deposit in the name of another, will not of themselves alone be sufficient to prove a complete gift or voluntary trust.[7]

In accord with the doctrine of the annotated case, though varying in facts and decision, is the Massachusetts case just quoted, decided before either of those last cited, and distinguishing prior cases in the same State,[8] upon the ground that the evidence therein failed to disclose the nature or extent of the fiduciary relation intended to be assumed by the party making the deposit.[9]

Intention to make Gift.—While the deposit of one's own money in a savings bank to the credit of another, without any qualification expressed at the time, is of itself *prima facie* evidence of a gift to the latter of the fund deposited, yet an intent to the contrary may be shown. The retention of the deposit book is some evidence of intent not to perfect the gift at the time of making the deposit; and this fact, and the withholding of knowledge from the person to whom the credit is so given, may indicate a purpose as of the time when the deposit is made, not to surrender dominion over the fund to the latter.[10] Indeed, to constitute a gift of money deposited in a savings bank in the name of the party claiming it a gift, it must have been put in the name of the alleged donee with the intention on the part of the alleged donor of making a gift of it, and it must ordinarily have been accepted by the donee.[11]

Evidence of Gift.—There is no gift made out where a husband deposited money in a savings bank in the joint names of himself and wife; where it is in evidence that he drew the interest on such deposit himself; where he deposited at the same time as much as the bank would receive in his own name; and where the only evidence of a gift was a declaration to his wife, made when she was scolding him about drawing the other money from the bank, that he would have no more to do with it.[12] So, where a wife deposited money of her husband, consisting mainly of her own savings, in her own name, without his knowledge, it was held that this was no evidence of a gift to her, from the mere permissive act of allowing the wife to be the custodian of the money.[13] The admissibility of evidence of the intention to make a gift was considered in a case where a party deposited a sum of money in a savings bank in the name of her nephew, with a memorandum that the deposit could be paid to her, but retained the deposit book in her possession and drew out the dividends and part of the principal during her life-time. It was held that after her death, and the passing of the deposit book into the hands of her administrator, evidence *aliunde* was admissible as to her intention in making the deposit to vary the effect of the entries in the deposit book, and support the claim of a gift.[14]

Deposits made subject to Depositor's Order.—A gift is not made out under various special circumstances, where the money is deposited to the credit of the depositor, subject to the order of the depositor or of his daughter;[15] or where the deposit was in the joint names of the depositor and his sister, and the survivor of them, but subject to the order of either.[16] There is, likewise, no valid gift where a party after his death left two savings bank deposit books, one in his own name, the other in that of his son, order of himself, and on the last page of each was an order signed by him to pay the deposit to his son, in the one book absolutely and in the other at the father's death, but deposits and drafts were made after the dates of the orders, and neither of the books was delivered to the son, who had no knowledge of them.[17] Less rigid views are sometimes, however, favored where the other circumstances permit. Thus, it has been pointed out that a stipulation accompanying a deposit in the name of another, that it should be subject to the order of the depositor, is not decisive to negative

[5] See Ray v. Simmons, 11 R. I. 266, 23 Am. Rep. 447, 450.

[6] Gerrish v. New Bedford Institution for Savings, 128 Mass. 159, 35 Am. Rep. 365. This case is relied upon in Nutt v. Morse, 142 Mass. 1, holding that there was not a perfected gift where the transaction was intended to be in the nature of a testamentary disposition.

[7] Alger v. North End Savings Bank, 146 Mass. 418, 3 Am. St. Rep. 331, 333, relying upon Sherman v. New Bedford Savings Bank, 138 Mass. 581, and cases cited. In the case first noted it is, however, held that the evidence justifies a finding of a perfected gift, where it is to the effect that after the alleged donor deposited a sum of money in a savings bank in his own name as "trustee" for the alleged donee, the depositor told the beneficiary "I put it in for you" in the bank, and "that money is yours."

[8] Brabrook v. Boston Five Cents Sav. Bank, 104 Mass. 228, 6 Am. Rep. 222; Clark v. Clark, 108 Mass. 522.

[9] Gerrish v. New Bedford Inst. for Savings, 128 Mass. 159, 35 Am. Rep. 365. In this case a party deposited in a savings bank in his own name all he was permitted to deposit under the rules, and then made three other deposits as trustee, one for his only son and the others for his grandchildren. He took separate bank books, which were never delivered, but were found among his effects on his death. He received the dividends during his life. The by-laws provided that he must produce the books to receive dividends, in order that they might be entered, and that any depositor might designate the person for whose benefit he made deposit, which should bind his legal representatives. The son and grandchildren offered to prove that he had told each of them that he had made and intended the deposits for them after his death, but he wanted to draw the interest during his life. It was held that such evidence was competent, and would justify a finding of a full and effectual trust.

[10] Orr v. McGregor, 43 Hun, 528, 533, cited in Mack v. Mechanics' and Farmers' Sav. Bank, 50 Hun, 477, 479.

[11] See Scott v. Berkshire Co. Sav. Bank, 140 Mass. 157. This case is more fully stated in Newmark on Bank Deposits, § 152, where it is cited before its appearance in the regular reports, as Scott v. Ford, 2 N. E. Rep. 925.

[12] Slick v. Grote, 42 N. J. Eq. 352, 353, *et seq.*, cited in the annotated case.

[13] McDermott's Appeal, 106 Pa. St. 358, 51 Am. Rep. 526.

[14] Northrop v. Hale, 72 Me. 275, 277. See also, as to competency of a letter and declarations relating thereto, as evidence of intention to make gift by placing deposits in another's name: Scott v. Berkshire Co. Sav. Bank, 140 Mass. 157.

[15] Murray v. Cameron, 41 Md. 466, 476.

[16] Taylor v. Henry, 48 Md. 550, 30 Am. Rep. 486, 499. But it is otherwise where the deposits by a grandmother to the credit of her grandchildren, and made subject to her own order or that of her daughter, in accordance with the by-laws of the bank relative to deposits by parents and guardians: Gardner v. Merritt, 32 Md. 78, 3 Am. Rep. 115, 118

[17] Burton v. Bridgport Sav. Bank, 52 Conn. 398, 52 Am. Rep. 602, 603, distinguishing Camp's Appeal, 36 Conn. 88, 4 Am. Rep. 39; Minor v. Rogers, 40 Conn. 512, 16 Am. Rep. 69, and Kerrigan v. Rantigan, 43 Conn. 17. See fuller statements of these cases in Newmark on Bank Deposits, § 151

the theory of a gift.[18] Even a deposit of money in a savings bank in the name of another, subject to the right of the depositor to take the income during his life, but intended as a gift, and accepted as such by the donee, has been held a valid gift *inter vivos*, although the donor retained the deposit book to enable him to draw the income, and made no declaration to the bank other than to direct the deposit in the donee's name.[19]

Purpose of making Deposits in Another's Name.—The various objects for which deposits may be made by one person in the name of another, suggested in the annotated case to negative any necessary implication of a gift, are illustrated by cases where the party first deposited in his own name and on his own account all that he was allowed to by the rules of the bank;[20] where a party made a deposit in his brother's name after the bank had refused to receive a further deposit in his own name;[21] and where the deposit was made in another's name to avoid attachment.[22]

NATHAN NEWMARK.

[18] Eastman v. Woronow Sav. Bank, 136 Mass. 208, 209, holding that the existence of such a stipulation is only one circumstance to be taken into consideration in determining whether, in view of all the evidence there was at any stage of the transaction an intention on the part of the owner to divest himself of the property in question and transfer it to another.

[19] Smith v. Ossipee Valley Ten-Cent Sav. Bank (N. H.), 9 Atl. Rep. 792, relying upon Blasdell v. Locke, 52 N. H. 238, distinguishing as to resemblance to testamentary disposition, Bartlett v. Remington, 59 N. H. 365, and for want of knowledge by donee, Pierce v. Burroughs, 58 N. H. 302, and collecting many of the conflicting authorities concerning what is necessary so to pass the title to money through the intervention of a savings bank.

[20] Gerrish v. New Bedford Inst. for Savings, 128 Mass. 159, 35 Am. Rep. 365, 366. See also Davis v. Lenawee Co. Sav. Bank, 53 Mich. 163, 165; Slick v. Grote, 42 N. J. Eq. 352, 354.

[21] Robinson v. Ring, 72 Me. 140, 39 Am. Rep. 308, 309.

[22] Broderick v. Waltham, Sav. Bank, 109 Mass. 149.

CORRESPONDENCE.

To the Editor of the Central Law Journal:

O, in his answer to query 27 (30 Cent. L. J. 162), says: "The owner of land abutting on a navigable stream takes title only to the high-water line," and cites but two authorities in support of his proposition. It would be proper to say that the authorities are not at all harmonious upon that proposition. In the State of Indiana, it has been held by the supreme court, in 4 Blackf. 285; 6 Blackf. 280; 2 Ind. 274; 29 Ind. 419; 29 Ind. 364, and adhered to in 41 Ind. 35, that such owner's title extends to low-water mark on the Ohio river. The same view has been maintained in Illinois and in Mississippi as to the Mississippi river; and in Ohio it has been held to extend to the middle of fresh-water navigable streams: 3 Ohio, 496; 11 Ohio, 311; 16 Ohio, 544. Such seems to be the holding in other States. From an examination of 3 Kent upon the subject of riparian rights, and the authorities cited by Mr. Kent, it may appear that the declaration of O is only an exception to a general rule, directly opposite.

W. H. BAINBRIDGE.

Lawrenceburg, Ind.

RECENT PUBLICATIONS.

THE AMERICAN STATE REPORTS, Containing the Cases of General Value and Authority, Subsequent to Those Contained in the "American Decisions" and the "American Reports," Decided in the Courts of Last Resort of the Several States, Selected, Reported, and Annotated By A. C. Freeman and the Associate Editors of the "American Decisions." Vol. 10 San Francisco: Bancroft Whitney Company, Law Publishers and Law Booksellers. 1890.

The tenth volume of this series of reports contains decisions of the Supreme Courts of Indiana, Kansas, Maine, Missouri, New Hampshire, New York, Pennsylvania, Tennessee, Texas and Virginia, showing the original volumes of reports in which the cases selected and reported may be found. Mr. A. C. Freeman and his associates have endeavored to select cases of general value and importance subsequent to those contained in the "American Decisions" and the "American Reports." The learned compilers have shown much care and diligence in this admirable selection of decisions of courts of last resort of the several States. The annotations are important and complete, and add to the great value of these reports. Judging from the excellent work evidenced in this and the preceding volumes, we feel assured that these reports will merit the support of the profession, and will prove a valuable addition to the library of those who have the American Decisions and the American Reports.

BOOKS RECEIVED.

DIGEST OF INSURANCE CASES, embracing the Decisions of the Supreme and Circuit Courts of the United States, of the Supreme and Appellate Courts of the various States and Foreign Countries, upon disputed points in Fire, Life, Marine, Accident and Assessment Insurance, and Affecting Fraternal Benefit Orders. Reference to Annotated Insurance Cases and Editorials in Law Journals on Insurance Cases, for the year ending October 31, 1889. By John A. Finch, of the Indianapolis Bar. Indianapolis: The Rough Notes Company, Publishers, 1889.

HUMORS OF THE LAW.

DOWN IN THE BLUE GRASS.—Judge Blueclay. Sheriff, convene the co't. Where is the jury?

Sheriff. Back in the jail yard, your Honah, We happened to get three Frenches and a couple of Eversoles on it, and they're fightin' it out, if please the co't.

Judge. Where is the prisoner in this horse stealing case?

Sheriff. The Barnard boys got him out last evenin' while I was at supper and hanged him.

Judge. Strike off the case, Mr. Clerk. Are the parties to the Salt Lick road case ready to proceed?

Sheriff. It was settled early this morning, they're getting the defendant ready for burial now.

Judge. Well, then, if the District Attorney is ready we will proceed with the State v. Hiram Garrard.

Sheriff. If it please the Court, the District Attorney is not ready. Garrard's counsel carved him with a bowie knife right after breakfast.

Judge (wearily). Adjourn the co't.

A judge in Pennsylvania rebuked a jury by saying: "Enter the judgment, Mr. Clerk." "Now enter another vacating it." "I want it understood that it takes thirteen men to steal a man's farm in my Court."

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

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1. ADMINISTRATORS — Amendment of Pleadings. — Where the petition in an action against an administrator on a note of his intestate fails to allege that the note was for valuable consideration, or to state the precise date of the transfer to plaintiff, and that plaintiff is still the owner, an amendment curing these formal defects does not constitute a new cause of action entitling defendant to plead the statute of limitations prescribed in case of failure to bring suit within ninety days after a claim is rejected by an administrator. — *Tolbert v. McBride*, Tex., 12 S. W. Rep. 752.

2. ADMINISTRATORS— Allowance. — Code Iowa, § 2375, provides that the court shall, if necessary, set off to the widow, and children under 15 years of age, of the decedent, or to either, sufficient of his property, of such kind as it shall deem appropriate, to support them for 12 months from the time of his death: *Held*, that if the personal property is inadequate, a sale of the realty may be ordered.—*Newans v. Newans*, Iowa, 44 N. W. Rep 213.

3. ADMINISTRATORS—Claims.— In an action against an administrator, it appeared that plaintiff held a promissory note executed by the intestate, and secured by a chattel mortgage on certain property; that the administrator, under order of court, sold the property, free of such lien, for the purpose of discharging the same; that, so far as general creditors were concerned, the estate was insolvent: *Held*, that under Elliott's Supp. 1889, § 401, providing that an administrator shall pay the debts of his intestate in proper order, as soon as he shall have money in his hands with which to pay the same, it was the duty of defendant to pay plaintiff's claim as soon as the property was sold.—*Jewett v. Hurrie*, Ind., 23 N. E. Rep. 262.

4. ADMINISTRATORS.—Where a claim filed against an estate is disallowed by an executor, and is thereupon transferred to the issue docket, it is not necessary that a formal complaint be filed, but the claim and affidavits accompanying it are a sufficient statement of the claim. —*Stricker v. Barnes*, Ind., 23 N. E. Rep. 263.

5. ADVERSE POSSESSION — Boundaries. — Where a purchaser enters into the possession of land under an executory contract which leaves the legal title in his vendor, and contemplates a further conveyance of the complete title, and, where one is in under the owner of the legal title, a privity exists which precludes the idea of a hostile or tortious possession that silently ripen an adverse possession under the statute of limitations. *Aliter*, when the vendee pays the purchase money. From that time his possession is adverse to the vendor.—*Anderson v. McCormick*, Oreg , 22 Pac. Rep. 1062.

6. APPEAL—Review. — Neither a motion to dismiss an action, nor a motion to dismiss an attachment, is reviewable until a final judgment has been rendered. — *Simpson v. Kirchbaum*, Kan., 22 Pac. Rep. 1018.

7. APPEAL—Records.—The certificate of a trial judge which simply recites that the affidavits of certain persons were used and considered, but fails to show that the affidavits set out in the transcript on appeal from an order after judgment are the same or true copies of the ones used on the hearing, is insufficient, and the appeal should be dismissed.—*Somers v. Somers*, Cal., 22 Pac. Rep. 967.

8. ASSOCIATIONS— Expulsion of Members.—The fact that the by-laws provide for the restoration of expelled members by a two-thirds majority of the members, upon the payment of all dues and an additional fine, does not deprive such expelled member, of the right of restoration by *mandamus* without first applying for restoration under the by-laws, the remedy so provided not being adequate.—*People v. Musical Mutual Protective Union*, N. Y., 23 N. E. Rep. 129.

9. ATTACHMENT—Bond.—The discontinuance of an attachment suit as to one of several defendants does not discharge a bond given by the defendants jointly to dissolve the attachment.— *Dalton v. Barnard*, Mass., 23 N. E. Rep. 218.

10. ATTACHMENT — Dissolution. — A receiptor for attached property, binding himself to return it to the officer on demand, or, if no demand is made, within 30 days after judgment in the action, is not liable on his undertaking where he has returned the property to the debtor, who was adjudged an insolvent before demand made, and within 30 days from the rendition of judgment and issuance of execution, as the insolvency discharges the attachment. — *Wright v. Morley*, Mass., 23 N. E. Rep. 232.

11. CARRIERS—Sleeping Car Companies.—A passenger on defendant's sleeping car, being told he would have to change cars on account of a wreck, started forward with all the other passengers, but, upon missing his pocket-book, returned to his berth, where he had left it. No one was in the car after the passenger left, except the conductor, porter, and a train brakeman who passed through without stopping. The conductor, porter, and passengers were searched, but the pocket-book could not be found: *Held*, that a verdict against the sleeping car company would not be disturbed.—*Pullman Palace Car Co. v. Matthews*, Tex., 12 S. W. Rep. 744.

12. CARRIERS—Passenger.—A railroad company owes no duty of safe carriage to one who is on its train without its knowledge or consent, and in a place where its employees in the discharge of their ordinary duties would not discover him, though it is the intention of such person to pay his fare.—*Bricker v. Caldwell*, Penn., 18 Atl. Rep. 983.

13. CARRIERS—Liability as Warehousemen.—In an action for goods destroyed by fire while in possession of a warehouseman, where the evidence shows that the fire began in an adjoining building, and fails to show that the warehouseman owned such building, there is a failure to show negligence as to the origin of the fire.—*Draper v. Delaware & Hudson Canal Co.*, N. Y., 23 N. E. Rep. 131.

14. CARRIERS OF PASSENGERS—Negligence.—Where a passenger was riding on a car with his elbow resting on the window-sill, and slightly projecting out of the window, but his hand and wrist were inside, and a stick of cord-wood fell from the pile corded or stacked near the track, through the open window at which he sat, striking in the palm of the hand, or near it catching in the mouth of the coat sleeve, and jammed the arm backward, and injured it, *held*, that the facts were not such as the court could decide to be negligence in law by allowing a nonsuit but were for the jury.—*Moakler v. Willamette Val. R. Co.*, Oreg., 22 Pac. Rep, 948.

15. CARRIERS OF PASSENGERS—Jumping from Train.—While it is the duty of a railroad company to stop its train at the station to which it has contracted to carry a passenger, and to land him safely and conveniently, yet the fact that the company neglects this duty, and its train passes the station without stopping does not justify a passenger in jumping from the moving train, unless expressly or impliedly invited to do so by the employees of the company.—*Walker v. Vicksburg, etc. R. Co.*, La., 6 South Rep. 916.

16. CHATTEL MORTGAGE—Receiver.—Where a corporation engaged in carrying on a newspaper and printing-office is greatly embarrassed by its debts, and there are dissensions existing between its officers likely to materially injure the value of its property, a receiver may be appointed, in an action by a mortgagee for the foreclosure of his chattel and sale of the mortgaged property, where it appears that the condition of the mortgage has not been performed.—*State Journal Co. v. Commonwealth Co.*, Kan., 22 Pac. Rep. 982.

17. CHATTEL MORTGAGES—Record.—A creditor who receives goods in payment of his debt is a purchaser in good faith, within the purview of 4 Rev. St. N. Y. (8th Ed.) 2508, which declares that an unfiled chattel mortgage is void as against subsequent purchasers in good faith.—*Button v. Rathbone, Sard & Co.*, N. Y., 13 N. E. Rep. 122.

18. COMPROMISE—Construction.—Where a debtor makes an arrangement with his creditors which is declared to be a final settlement of all transactions theretofore had, and all suits pending, between the parties, among which is an attachment suit, the settlement is a bar to any subsequent action by the debtor on the bond given by the creditors in the attachment suit.—*Baker v. Kennon*, 6 South Rep. 926.

19. CONSTITUTIONAL LAW—Jurors.—A legislature has constitutional authority to provide that mere inhabitancy in a town or county shall not disqualify one from sitting as a juror, to try a prisoner for unlawfully obtaining money from the treasurer of the town county.—*Commonwealth v. Brown*, Mass., 23 N. E. Rep. 98.

20. CONSTITUTIONAL LAW—Statutes.—Under Const. Mich. art. 4 § 28, providing that no new bill shall be introduced in the legislature after the first 50 days of the session, Local Act 1889, No. 341, which was introduced after the 50 days, as a substitute for a bill previously introduced is unconstitutional and void, and parol evidence of the members of the legislature of the proceedings in that body, and of the contents of the bill for which the substitute was introduced, is not admissible, but the court will examine the journals to ascertain those facts.—*Sackrider v. Supervisors of Saginaw County*, Mich., 44 N. W. Rep. 167.

21. CONSTITUTIONAL LAW.—An act of the legislature, not authorized by the State constitution at the time of its passage, is null, and is not validated by a subsequent adoption of an amendment to the constitution authorizing it.—*State v. Tufley*, Nev., 22 Pac. Rep. 1064.

22. CONTEMPT—Town Council.—The charter granted by the legislature to the town of C, constituted the town council a court, and gave it "full power and authority to punish all offenders against the laws rules, and regulations of said town:" *Held*, under Code Ga. §§ 204, 206, that the town council had power to punish for contempt.—*Swafford v. Berrong*, Ga., 10 S. E. Rep. 993.

23. CONTRACT—Parol Evidence.—Where a contract has been reduced to writing without any uncertainty as to its terms and meaning, the presumption of law is that the entire contract is contained in the writting, and parol testimony of declarations made by the parties at the time it was made is not admissible in evidence.—*Dodge v. Kiene*, Neb., 44 N. W. Rep. 191.

24. CONTRACTS—Consideration.—Plaintiff's assignors for the benefit of creditors assumed the contract of another to deliver certain bonds to defendants, and made a 10 per cent. deposit as security for the performance of the agreement on their part, payable on the joint order of themselves and defendants, in consideration of an extension of time and a like deposit by defendants. The bonds were never delivered: *Held*, that the contract was supported by sufficient consideration and valid, and that defendants, in the absence of fraud, would not be decreed to join plaintiff in an order for the payment of the deposit to him, for the benefit of the assignor's creditors.—*Chittenden v. Morris*, N. Y., 23 N. E. Rep. 163.

25. CONTRACTS—Conditions.—Under the provisions of a contract that the party of the first part should retain, from the amount coming to the party of the second part for performing certain work, inspectors' fees for such time as the work should remain uncompleted, beyond a special time, but that the time during which the work is delayed by the party of the first part, which should be determined by third parties, should be excluded, it is a condition precedent to the right of the party to the second part to be relieved from the allowance of such inspectors' fees for the time that the work was delayed by the party of the first part, that the matter should be submitted to and determined by such third parties, unless they refuse or neglect to act upon it.—*Phelan v. Mayor, etc., of the City of New York*, N. Y., 23 N. E. Rep. 175.

26. CONTRACTS—Performance.—Plaintiff contracted to construct in the court-house of defendant county certain heating apparatus, and cells for all jail purposes, but failed to comply with its contract in certain particulars in the manner of construction and material used: *Held*, that it was still entitled to recover on a *quantum meruit* for the benefit actually received, though the county had not accepted the work, it having become part of the realty.—*Ætna Iron & Steel Works v. Kossuth County*, Iowa, 44 N. W. Rep. 215.

27. CONTRACT—Consideration.—The parties to a contract annulled it by an agreement reciting that it had been "superseded by agreements and arrangements made in lieu thereof," which were embodied in certain contracts executed by the same parties. By these, defendant's testator was to be relieved from all interest in and obligations under the original contract: *Held*, that the obligations assumed by testator under the new contract, and the mutual agreement of the parties to the original contract to discharge each other from reciprocal obligations thereunder, and to substitute a new contract therefor, were sufficient considerations for the annulment.—*McCreery v. Day*, N. Y., 23 N. E. Rep. 198.

28. CORONERS—Inquest.—Mansf. Dig. Ark. § 692, which provides for a coroner's inquest when a person dies an unnatural death, does not authorize the coroner, in the absence of any circumstance tending to induce the belief that the death resulted from an unnatural cause, to hold an inquest on the body of a person who died from apoplexy.—*Clark County v. Callaway*, Ark., 12 S. W. Rep. 756.

29. CORPORATIONS.—Plaintiffs and defendants, desiring to form an association for manufacturing, held a meeting, effected a temporary organization, elected

officers, and subscribed the capital stock. At a subsequent meeting they adopted articles of incorporation in due form, which, however, were not recorded, as required by Code Iowa, § 1061: *Held*, that the relation between the parties was that of the stockholders of a corporation.—*Heald v. Owen*, Iowa, 44 N. W. Rep. 210.

30. CORPORATIONS—Insolvency. — Creditors of a corporation, knowing that it was insolvent, arranged with an officer thereof that he should not disclose the service of the summons on him. They afterwards obtained judgments by default, and sold the personal property of the corporation on execution: *Held*, that there was no violation of the statute (Rev. St. N. Y. pt. 1, ch. 18, tit. 4, § 4), as it puts no restraint on creditors, and only on the affirmative action of the corporation and its officers.—*Varnum v. Hart*, N. Y., 22 N. E. Rep. 183.

31. CORPORATIONS—Stockolders.—Where a person becomes a stockholder in a corporation organized under the laws of a foreign State, he contracts with reference to all the laws of that State which enter into the constitution of the corporation; hence the extent of his individual liability as a stockholder for corporate debts must be determined by the laws of the State.—*First Nat. Bank v. Gustin Minerva Con. Min. Co.*, Minn., 44 N. W. Rep. 198.

32. CORPORATIONS — Stockholders. — A corporation cannot maintain a suit for equitable relief, except as the representative of the stockholders, and if the stockholders are without equity, they cannot through the corporate organization, or in its name obtain relief either for themselves or for the corporation.—*Arkansas River Land, etc. Co. v. Farmers' Loan & Trust Co.*, Colo., 22 Pac. Rep. 954.

33. COUNTIES—Bridges.—It being the duty of a county to maintain its bridges at its own expense, except as otherwise provided by statute, a township cannot be charged with any of the expense of repairing a county bridge situated within the township, but not under the control of a town or city, except in the case designated in Elliott's Supp. Ind. § 1585, which provides that, if the probable cost of constructing or repairing a bridge exceeds $75, the trustee of the township in which such bridge is to be located shall notify the county commissioners of the necessity of such a bridge, and, if they construct or repair such bridge, the trustee shall pay from the township's road fund $75 of the cost of such building or repairs.—*Board of Commissioners v. Washington Tp.*, Ind., 23 N. E. Rep. 257.

34. CRIMINAL LAW — Slander.—On a prosecution for slander by imputing want of chastity to a female where there is evidence that the general reputation for chastity of the female alleged to have been slandered is bad, it is error, under Pen. Code Tex. art. 646, which provides that "the general reputation for chastity of the female alleged to have been slandered may be inquired into," to refuse an instruction that if the jury believe this evidence they should acquit.—*Shaw v. State*, Tex., 12 S. W. Rep. 741.

36. CRIMINAL LAW—Homicide —Manslaughter. — On a trial for murder, defendant testified that he and deceased, his partner, got into an altercation, and called each other liars; that deceased advanced on him, and just as he stooped to pass under a beam to where defendant was, defendant seized a stick, and struck him over the head, knocking him down. Seeing that he had struck deceased much harder than he intended, he went to his aid and called for help. He testified that he did not intend to strike so hard, and did not intend to kill him. Other witnesses testified that immediately after the blow defendant said that he did not intend to strike so hard: *Held*, that the evidence presented the issue of manslaughter, and that instructions should have been given on that grade of homicide. — *Boyd v. State*, Tex., 12 S. W. Rep. 737.

37. CRIMINAL LAW—Disorderly Houses — Evidence. — On trial of an information for keeping a house of ill fame, resorted to for the purpose of prostitution and lewdness, evidence of statements made by defendant about her husband, who was not living in the house, and of her arrest, years before, on a charge of prostitution, is not admissible. — *People v. Pinkerton*, Mich., 44 N. W. Rep. 180.

38. CRIMINAL LAW — Bastardy. —L M, an unmarried woman, having made complaint, under the statute relating to illegitimate children, before a justice of the peace, against C K, who was arrested and brought before said justice, and she having been examined before said justice, and her examination taken down in writing, after the birth of her illegitimate child said L M having died, the action was revived in the district court in the name of the county as plaintiff. Upon the trial the plaintiff offered in evidence the examination of L M before the justice, which was rejected: *Held*, error.—*Dodge County v. Kemnitz*, Neb., 44 N. W. Rep. 184.

39. CRIMINAL LAW—Justifiable Homicide.— Where defendant, being in the actual and peaceable possession of land under a claim of title, is opposed in his entrance thereto, for the purpose of harvesting grain sown by him, by one whose wife has actual title thereto, and is, on advancing, fired at and wounded, as is also his son, who seized the opposing party when he drew his pistol, the killing of the opposing party by the defendant in firing at him is justifiable homicide. — *People v. Stone*, Cal., 22 Pac. Rep. 975.

40. CRIMINAL LAW—Conspiracy.— There being no legislation to indicate an intention to change the common-law rule, no prosecution for conspiracy can be maintained in California against husband and wife. — *People v. Miller*, Cal., 22 Pac. Rep. 934.

41. CRIMINAL LAW — Larceny. — In an indictment for the larceny of money, where the prosecuting witness testified that the money stolen was "good and lawful money of the United States," and no objection to the competency of the testimony was made at the time of the trial, a verdict of guilty will not be disturbed, on appeal, on the ground that the testimony was incompetent.—*Graves v. State*, Ind., 23 N. E. Rep. 155.

42. CRIMINAL LAW— Fraudulent Appropriation. — The term "money," as used in Pen. Code Tex. art. 108, which provides for the punishment of any county officer who shall fraudulently take or misapply any "money" belonging to the county, means legal-tender, metallic coins or legal-tender currency of the United States; the definition of the term in articles 789 and 792 being confined to the offenses of embezzlement and swindling.—*Lewis v. State*, Tex., 12 S. W. Rep. 736.

43. CRIMINAL LAW—Homicide— Self defense. — An instruction that if the jury believe "that deceased was attacking defendant at the time, and that said attack produced in defendant a reasonable expectation or fear of death, or some serious bodily injury, then defendant would be justifiable in the killing; and it would make no difference whether such danger was real or imaginary, if it have the appearance of being real, and if he acted upon such belief of apparent danger,"—is defective, as it does not distinctly direct the jury that the danger must be judged of from the defendant's standpoint, and no other, and from all the circumstances proved.—*Gongales v. State*, Tex., 12 S. W. Rep. 733.

44. CRIMINAL LAW—Conspirators.—The rule that the acts, conduct, and declarations of one co-conspirator, after the consummation of the conspiracy, are inadmissible as evidence against another conspirator, cannot be extended to exclude evidence of the subsequent finding of the fruits of the crime in the possession of one of the conspirators whose complicity in the perpetration of the crime has been fully established.—*Clark v. State*, Tex., 12 S. W. Rep. 729.

45. CRIMINAL LAW—Infamous Offenses.—Any offense involving imprisonment in a general State prison or penitentiary is infamous, and cannot be prosecuted by information, under the first clause of the fifth amendment Const. U. S., which declares that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury."—*United States v. Smith*, U. S. C. C. (Va.), 40 Fed. Rep. 755.

46. CRIMINAL LAW — Assault — Deadly Weapon. — A pitchfork is a deadly weapon, within the meaning of Gen. St. Ky. ch. 29, art. 6, § 2, prescribing the punishment for willful and malicious striking with a deadly weapon, with intent to kill.—*Evans v. Commonwealth*, Ky., 12 S. W. Rep. 767.

47. CRIMINAL CONVERSATION.—In an action for criminal conversation, where the act of adultery is not shown by direct proof, the plaintiff must show: First, a disposition to illicit intercourse on the part of the wife; second, a disposition to illicit intercourse with the wife on the part of the defendant; and, third, opportunity to gratify such mutual disposition.—*Ramsay v. Ryerson*, U. S. C. C. (N. Y.), 40 Fed. Rep. 739.

48. CRIMINAL PRACTICE—Lost Indictment.— Where a copy of an indictment is substituted for the lost original after the jury has been impanied and sworn, the objection that the jury were sworn to try the case upon the indictment, as returned by the grand jury, and that, as it was not in existence, the court had no jurisdiction to impanel the jury, is without merit, as the substituted copy is of the same effect as the original.—*State v. Shank*, Iowa, 44 N. W. Rep. 241.

49. CRIMINAL PRACTICE— Information. — Under Code Iowa, § 4662, requiring in an information a statement of the acts constituting the offense charged in ordinary and concise language, etc., and information charging that defendant "did commit the crime of unlawfully and willfully disturbing and interrupting the school taught by," etc., is not sufficient to sustain a conviction. —*State v. Butcher*, Iowa, 44 N. W. Rep. 239.

50. CRIMINAL PRACTICE—Accused as Witness.—Under Act Tex. April 4, 1889, § 1, any allusion by the prosecuting attorney, to defendant's failure to testify in his own behalf is ground for a new trial, though the allusion was called forth by remaks of defendant's attorney, and the court admonished him that he could not read or comment on the law.—*Hunt v. State*, Tex., 12 S. W. Rep. 737.

51. CRIMINAL PRACTICE—Indictment— Bad Spelling.— Mere incorrect orthography of a material word will not vitiate an indictment.—*Lefler v. State*, Ind., 23 N. E. Rep. 154.

52. CURTESY—Trusts.—The husband of a woman taking a use trust under a trust deed is entitled to curtesy therein.—*Carson v. Fuhs*, Penn., 18 Atl. Rep. 1017.

53. DEED OR WILL.—An instrument in form of a warranty deed is a deed, and not a will, though providing: "This deed is to go into effect after the death of [the grantor,] she claiming her right to hold the land so long as she lives, and at her death all the franchises and right which she holds to be to the party of the second part."—*Seals v. Pierce*, Ga., 10 S. E. Rep. 589.

54. DEED — Acknowledgment. — A certificate by a proper officer, that the grantor in a deed acknowledged it before him, is not conclusive proof of its execution.—*O'Neil v. Webster*, Mass., 23 N. E. Rep. 235.

55. DEED—Parol Evidence.—Parol evidence is admissible to prove the circumstances under which a deed to real property was made, or to which it relates, or to explain an ambiguity, intrinsic or extrinsic, or to show the situation of the subject of the deed, or of the parties to it, in order to ascertain the premises which it was intended to convey.—*Hicklin v. McClear*, Oreg., 22 Pac. Rep. 1057.

56. DEED—Consideration.—The signing of a note as surety is a consideration, for the transfer of property. —*Grigsby v. Schwarz*, Cal., 22 Pac. Rep. 1041.

57. DEEDS—Undue Influence.— A voluntary conveyance by a father of substantially all his property to his daughter will be set aside, on the ground of undue influence, where it is shown that the weakness of mind of the grantor, who was over eighty years old, was extreme, and that in other business transactions he was wholly controlled by and depenent upon the grantee.—*Fitch v. Reiser*, 44 N. W. Rep. 214.

58. DEED—Quitclaim— Etoppel. — Where the owners of a lot, who have joined with the owners of adjoining lots in a quitclaim deed of a strip of land off the ends of the lots, "for the purpose of a public street," in order to widen the street, afterwards acquire title to the adjoining lots by warranty deed containing no exception of the strip granted for the street, the quitclaim deed does not estop them from claiming the full length of the acquired lots, in a prosecution for obstructing the street.—*People v. Miller*, Mich., 44 N. W. Rep. 172.

59. DEED—Parol Evidence.— Where a deed conveys "all those parcels of land sold to" the grantor by a third person, and it appears that such third person made a written agreement to sell the grantor more land than he conveyed to him, parol evidence is admissible to explain whether the deed passed the land described in the agreement, or only that actually conveyed.—*Bradish v. Yocum*, Ill., 23 N. E. Rep. 114.

60. DEPOSITIONS—Evidence.—H and B came into an action as intervenors, each by a separate pleading, claiming for himself the property which was the subject of the action, but tendering the same issue as to the facts which constituted plaintiff's alleged cause of action: *Held*, that a deposition taken on the application of H, and upon interrogatories propounded by him, and cross-interrogatories propounded by the plaintiff, bearing exclusively upon such issue, was admissible as evidence in favor of B as well as H.—*Lougee v. Bray*, Minn., 44 N. W. Rep. 194.

61. DESCENT AND DISTRIBUTION.—Under Rev. St. 1851, ch. 50, § 1, if a person died intestate, seised of lands, leaving surviving him a widow, brothers and sisters, and a mother, but no issue or father, the widow took a life estate, under subdivision 2, and the remainder of the estate descended, under subdivision 3, in equal shares to the brothers, sisters, and mother. In such a case the remainder, after the widow's life estate, descended as if no widow had survived.—*Lindley v. Groff*, Minn., 44 N. W. Rep. 196.

62. DOWER—Limitation of Actions.— As Gen. St. Ky. ch. 53, art. 4, § 2, gives the widow dower in any real estate of which the husband, or any one for his use, "was seised of an estate in fee simple, at any time during coverture," the fact that the husband lost title to lands of which he was seised, during coverture, by adverse possession, does not affect his widow's right to dower therein.—*Williams v. Williams*, Ky., 12 S. W. Rep. 760.

63. DRAINAGE—Surface Water.—The owner of an easement for the discharge of surface water drained from his land, by open ditch, to the land of another, may change the ditch to a tile drain, and is thereafter entitled to perpetual injunction against obstructions to the discharge on the adjoining land, where it appears that the flow of water has not been increased by the change.—*Davidson v. Hutchinson*, N. J., 18 Atl. Rep. 977.

64. EJECTMENT — Evidence. — A deed constituting a link in plaintiff's claim of title, as set out in the declaration, is admissible, though neither of the parties thereto is shown to have been in possession. — *White v. Scofield*, Ga., 10 S. E. Rep. 591.

65. EJECTMENT—Evidence. — Where plaintiff in trespass to try title claims under a duly recorded contract for the land in controversy, signed by defendant's predecessor in title, it is proper to permit him to testify as to the making of a former contract which was accidentally destroyed, and in lieu of which the contract in question was given.—*Chamberlain v. Boon*, Tex., 12 S. W. Rep. 727.

66. EJECTMENT—Betterments.—In ejectment, where the jury find that the defendants in good faith sunk an oil-well on the land in dispute, believing it to be their land, they are entitled to be reimbursed for the cost of the well, out of the proceeds of sale of the oil by a receiver pending the litigation.—*Appeal of Phillips*, Penn., 18 Atl. Rep. 998.

67. EMINENT DOMAIN—Damages.—The right to damages awarded to joint owners of land for the location and construction of a railroad through the same does not pass to a vendee by a conveyance of the land sub-

sequent to the award, though before it is paid.—*Appeal of Warrell*, Penn., 18 Atl. Rep. 1014.

68. EMINENT DOMAIN—Limitations.—If the legal title to the real estate in controversy was vested in a non-resident, who was absent from the State, and who was the immediate grantor of the appellant, the statute of limitation ceased to run during the absence from the State of such grantor.—*Chicago, K. & N. Ry. Co. v. Cook*, Kan., 22 Pac. Rep.

69. EQUITY—Jurisdiction.—When a court of equity acquires jurisdiction of a cause for one purpose, it maintains it for all purposes, and administers complete relief. It will neither invoke the aid of other courts, nor permit them to interfere with its process.—*Haynes v. Whitsett*. Oreg., 22 Pac. Rep. 1072.

70. EXEMPTIONS—Res Judicata.—That a question could have been litigated in a former controversy between the same parties is enough to settle it by the judgment rendered in that case as to all the property involved in that litigation; but, to settle the question as to other property, it must appear that it was actually litigated, not only that it might have been. Thus a waiver of exemption applicable to cotton, as well as other personalty, may be urged to condemn the cotton after the other property had been adjudicated exempt, although the waiver might have been, but was not, urged to subject the other property.—*Sloan v. Price*, Ga., 10 S. E. Rep. 601.

71. EVIDENCE—Adulteration.—In an action for damages for the adulteration of milk furnished by defendant under contract, an expert testified for plaintiff as to the results of his analysis of certain samples of defendant's milk: *Held*, that defendant, on cross-examination, might ask for the results of the analysis of other samples furnished by plaintiff.—*Michigan Condensed Milk Co. v. Wilcox*, Mich., 44 N. W. Rep. 281.

72. EVIDENCE—Confessions.— It is for the court to decide, in a criminal trial, whether alleged confessions have been made under such circumstances as to be properly receivable in evidence against the defendant; and its decision is to be sustained, unless manifestly against the weight of the evidence. — *State v. Holden*, Min., 44 N. W. Rep. 123.

73. EVIDENCE. — The admission, on second trial, of evidence concerning matters not discreditable to defendant, but which have been already adjudicated by the supreme court, is not prejudicial to him, where the findings of the trial court on both trials are in conformity with such adjudication.—*Schiffer v. Adams*, Colo., 22 Pac. Rep. 964.

74. EXECUTION.—Land held under bond for title, and partially paid for by the purchaser, is subject to levy and sale as his property, under § 3586 of the Code; nor will rescission by vendor and vendee, after a judgment against the latter, but before levy, defeat the lien of the judgment.—*Stewart v. Berry*, Ga., 10 S. E. Rep. 601.

75. EXECUTION—Curtesy.—In Arkansas, the husband's right of curtesy in his deceased wife's statutory separate estate is subject to execution for the payment of his debts.—*Stanley v. Bonham*, Ark., 12 S. W. Rep. 706.

76. EXECUTION—Discharge.—Where an order from the attorney of record of a judgment creditor to discharge the debtor, who is in custody, either actual or constructive, under an execution against his person, is given to the sheriff, and he makes no objection to the order on the ground that it is insufficient, or that the attorney had no authority to make it, but retains it without notice or question, he renders himself liable to the debtor for false imprisonment.—*Davis v. Bowe*, N. Y., 23 N. E. Rep. 166.

77. EXECUTORS—Sale to Pay Debts. — A sale of realty by an executor to pay debts, made pending an appeal seasonably taken from the decree authorizing the sale, by the widow and children of testator having the legal title, is void.—*Francis v. Daley*, Mass., 23 N. E. Rep. 218.

78. FEDERAL COURT—Bill of Exception.— A bill of exceptions, so far as regards the duty of the attorney making it, should be considered as filed when taken to the clerk's office and placed in the hands of the proper officer for filing. The form of indorsement placed on it by the clerk is immaterial. — *Preble v. Bates*, U. S. C. C. (Mass.), 40 Fed. Rep. 745.

79. FEDERAL COURTS — National Bank. — Under Act Cong. Aug. 13, 1888, § 4, the federal courts have jurisdiction of an action between a national bank located in one State and a citizen of another State. — *First Nat. Bank v. Forest*, U. S. C. C. (Iowa), 40 Fed. Rep. 705.

80. FEDERAL OFFENSE—Post-office. — Decoy Letters.—The use of test or decoy letters by inspectors of mails, for the purpose of ascertaining the depredators upon the mails, is proper and justifiable, as a means to that end. —*United States v. Dorsey*, U. S. D. C. (Miss.), 40 Fed. Rep. 752.

81. FEDERAL OFFENSE— Post-office. — An indictment against a postmaster, under Rev. St. U. S. § 3890, for detaining mail, is sufficient if it allege in the words of the statute that the letter in question was unlawfully detained, with intent to prevent its arrival. It need not aver that the letter was knowingly and willfully detained.—*United States v. Holmes*, U. S. D. C. (Mo.), 40 Fed. Rep. 750.

82. FORCIBLE ENTRY AND DETAINER.—Where an action of forcible entry and detention is certified to the district court upon the claim that the title to land is in dispute, it is error for the district court to summarily determine the controversy, and dismiss the action on a motion, because the title to the premises in controversy is still in the government.—*Lyman v. Todd*, Kan., 22 Pac. Rep. 1003.

83. FRANCHISE—Purchase.—The road-bed, toll-houses, and franchises of a gravel-road company were levied upon, and sold under execution, defendant becoming the purchaser. Afterwards the board of directors confirmed the sale, and in consideration of the purchase at execution sale, and the agreement to put and keep the road in repair, conveyed to the defendant all the property and franchises of the company: *Held*, that the purchase by the defendant was valid, and vested in him all the property and franchises of the company.—*State v. Hare*, Ind., 23 N. E. Rep. 145.

84. FRAUDS — Statute of — Sale of Land.— A memorandum of an agreement for sale of land is void under the statute of frauds, where it does not express the agreement of the parties that the sale is to be a payment and satisfaction of a mortgage on the land held by the purchaser.— *Messmore v. Cunningham*, Mich., 44 N. W. Rep. 145.

85. FRAUDS—Statute of—Debt of Another.—In an action for the price of certain machines, where it appears that defendant purchased them for the benefit of a third person rather than for himself, evidence that plaintiffs had been paid for the machine by the third person is admissible, though he is a stranger to the record, and did not act as defendant's agent in making the payment.—*Gray v. Herman*, Wis., 44 N. W. Rep. 248.

86. FRAUDS—Statute of—Contract.— In settlement of a suit on two notes against his daughter and her husband, decedent promised, in consideration of their relinquishing their defense, and giving security for interest to accrue to the time his granddaughter should become twenty-one, to indorse the notes to his granddaughter, and pay her $2,000 more when she arrived at that age: *Held*, that performance by the others within the year took the promise of decedent as to such payment out of the statute of frauds, forbidding suit on oral contracts not to be performed within one year.—*Piper v. Fosher*, Ind., 23 N. E. Rey. 269.

87. FRAUDS— Statute of.—The provision of the statute of frauds requiring an agreement for sale of land to be "signed by the party to be charged" is satisfied if signed by such party alone, and not by the party seeking to enforce the contract.—*Hodges v. Kowing*, Conn., 18 Atl. Rep. 979.

88. FRAUDULENT CONVEYANCES—Gifts.— In determining whether a gift of land was void as against creditors, on the ground that, at the time of making the convey-

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ance, the grantor did not retain sufficient property to pay his liabilities, he will not be considered to have been a debtor to a person who at that time was his judgment debtor, but who afterwards instituted suit against him, and recovered judgment for money paid for lands under false representations.— *Saners v. Logue*, Tenn., 12 S. W. Rep. 722.

89. FRADULENT CONVEYANCES—Husband and Wife.—A judgment confessed by a husband to his wife for an amount in excess of that actually due her will not be set aside at the instance of creditors of the husband, where it appears that there was an honest mistake on the part of the wife as to the amount due.—*Beaillion v. Howard Watch & Clock Co.*, Penn., 18 Atl. Rep. 922.

90. FRAUDULENT CONVEYANCES — Partnership. — A mortgage of his individual property by a partner, to his firm, to enable it to continue business, is not a conveyance in fraud of the partnership creditors.—*Rio Grand R. Co. v. Vinet*, U. S. S. C., 10 S. C. Rep. 168.

91. FRAUDULENT CONVEYANCE— Preference.— Though the burden of proof was primarily on plaintiffs to establish their allegations of fraud and collusion, yet, after the garnishee's testimony showed that he knew the debtors were unable to pay their debts, when he took nearly all their property in professed payment of his firm's debt, it was not error to charge that the burden was left on him to show the fairness of the transaction about which he had testified and by which he came into possession of the property.—*Klein v. Hoffheimer*, U. S. S. C., 10 S. C. Rep. 130.

92. FRAUDUSENT CONVEYANCE. — Property was conveyed, as a *dation en paiement*, to a wife by her husband, but the conveyance was set aside for fraud at the suit of the husband's attaching creditors, who obtained personal judgments against him after the writs of attachment were dissolved: *Held*, that a legal mortgage of the wife, recorded after commencement of the attachment suits, but before judgment, gave her a prior lien on the property, though the conveyance from the husband had not been set aside at the time she inscribed her mortgage.— *Bradley v. Claflin*, U. S. S. C. 10 S. C. Rep. 125.

93. FRAUDULENT CONVEYANCES — Estoppel. — An embarrassed firm conveyed its saw-mill and other property under a secret trust to pay certain creditors other than defendant, and the alleged purchaser carried on the business in his name, making advances to pay off pressing claims. Defendant had notice of the terms of the conveyance soon after it was made, had sawing done at the mill, and paid for it, as the transferee refused to allow it on his debt, but took no measure to set aside the conveyance for several years: *Held*, that he was not thereby estopped to attach it as in fraud of creditors.—*Corbitt v. Cutcheon*, Mich., 44 N. W. Rep. 163.

94. FRAUDULENT CONVEYANCES. — Where a husband sells to his wife certain personal property, which she aftewards uses in working the farm after the husband has abandoned the same and embarked in another business, there is sufficient delivery of the property to the wife.—*Pearson v. Quist*, Iowa, 44 N. W. Rep. 217.

95. GARNISHMENT—Exemption.—As Mansf. Dig. Ark. § 3244, in relation to the exemption of laborers' wages from seizure by garnishment which requires of the defendant a sworn statement to the effect that the wages claimed as exempt are less than the value of the personal property exempt to him under the constitution, manifests an intent to limit the right of exemption to those entitled to exemption under the constitution, and as only residents are entitled to the privilege, the sworn statement of defendant in garnishment proceedings is defective which fails to state that he is a resident of the State.—*Porter v. Navin*, Ark., 12 S. W. Rep. 705.

96. GARNISHMENT — Exemption. — Under Code Ala. 1886 § 2583, which provides that where money or choses in action or personal property are garnished, and the defendant claims them as exempted, his claim must be accompanied by an inventory and filed in the court in which such proceedings are pending, where the claim of exemption is too indefinite plaintiff may elect to demand judgment by default against the garnishee, or insist on a fuller inventory, the allowance of which is discretionary with the court. — *Tonsmire v. Buckland*, Ala., 6 South. Rep. 904.

97. GUARDIAN AND WARD.—Accounting.—A mother, as guardian of her child, will not be allowed for the maintenance and support of the ward, where she has had all the income of the child's land, and received the child's labor while at home, and her wages while away.—*In re Livernois' Estate*, Mich., 44 N. W. Rep. 279.

98. HIGHWAYS—Dedication.—That part of section 47, ch. 13, Gen. St. 1878, providing that, when any road, or portion thereof, shall have been used, and kept in repair, and worked, for six years, continuously, as a public highway, the same shall be deemed as having been dedicated to the public, is valid.—*Miller v. Town of Corinna*, Minn., 44 N. W. Rep. 127.

99. HIGHWAYS — Encroachments. — Though How. St. Mich., § 6611, confers on courts of chancery power "to hear and determine all cases of encroachments upon the public highways," in townships, villages, and cites, such courts will not, in the absence of special circumstances, assume jurisdiction of an alleged encroachment on a township highway, as by sections 1371 1378 an adequate remedy at law is provided for such case.—*Township of Lebanon v. Burch*, Mich., 44 N. Rep. 148.

100. HIGHWAYS—Obstruction.—In an action for an injunction and damages for entering on plaintiff's premises and removing his gates, a finding that the *locus* obstructed by plaintiff is not a public highway established under Acts Cal. 1861, p. 389 *et seq.*, as amended by St. 1862, p. 525, as claimed by defendants, is proper, where they fail to prove compliance with the requirements of the statute as to notice and the report of the reviewers.—*Smithers v. Fitch*, Cal., 22 Pac. Rep. 935.

101. HIGHWAYS—Prescription.— Where a public road has been located by proceedings under the statute, and opened and traveled by the public for more than ten years, the public thereby acquire an easement therein; and the court will not examine the original proceedings for the laying out of the road to determine whether or not they were valid.—*City of Beatrice v. Black*, Neb., 44 N. W. Rep. 189.

102. HIGHWAYS—User.—No length of use by the public of a highway which is supposed to be upon a certain line, but which, by mistake, is not, can give any claim to the highway under the statute of limitations, except as to the true line. — *Bolton v. McShane*, Iowa, 44 N. W. Rep. 211.

103. HIGHWAYS—Eminent Domain.— Pub. St. Mass. ch. 49, § 88, declares that where a way is laid out over the land of several persons an entry for the purpose of constructing any part of the way is deemed a taking of possession of all the lands included in the laying out made upon the same petition: *Held*, that the discontinuance of a portion of the way after the entry upon any portion does not cast off the owner's right to damages for the taking of land included in the portion so discontinund, though the entry was not on his land.—*Wheeler v. City of Fitchburg*, Mass., 23 N. E. Rep. 207.

104. HOMESTEAD — Legislative Power. — Under the homestead law of 1867, the homestead of a debtor is not liable to a sale upon attachment or execution, as long as it is owned and occupied as a homestead by the debtor. While a judgment will continue to be a lien upon it, which will become operative upon sale or abandonment, yet it is not within the power of the legislature, by subsequent enactments, to diminish the right conferred by that law, and acquired, as against the debts then in existence, by residence and occupation.—*Gallagher v. Smiley*, Neb., 44 N. W. Rep. 187.

105. HOMESTEAD. — The law in force at the time of death of a person, and not that in force at the time of a previous declaration of homestead on his land, governs as to homesteads and rights of survivors. — *Grunell v. Seybolt*, Cal., 22 Pac. Rep. 938.

106. HUSBAND AND WIFE— Wife's Mortgage.—Where a

married woman, holding land under a contract for a deed, gives a mortgage thereon, with her husband, to secure a note made by both, and the land is paid for either with this money, or with money furnished by the husband, and a deed is executed to her, the mortgage will be held to be a valid security, in equity. — *Lammons v. Allen*, Ala., 6 South. Rep. 915.

107. HUSBAND AND WIFE—Dower.— Where a wife has released her dower interest in consideration of a prior deed of settlement, the settlement will be held good, to the extent of a just compensation for the interest she has parted with, though it was made under such circumstances that it must be held fraudulent as to the creditors of the husband, as fraud will not be imputed to the wife.—*Strayer v. Long*, Va., 10 S. E. Rep. 574.

108. INFANCY—Contracts.— Plaintiff, a minor, with the assent of his mother, agreed with defendant to work for him, and that a portion of his wages might be applied to the payment of a debt due defendant from the estate of the deceased father of plaintiff. When the debt had been paid defendant discharged him: *Held*, that in the absence of a showing that he had any interest in preventing defendant from collecting his debt out of the father's estate, plaintiff was entitled to avoid the contract, and recover either upon a *quantum meruit* or upon his contract for the balance due him for services rendered.—*Dube v. Beaudry*, Mass., 23 N. E. Rep. 222.

109. INJUNCTION—Gravel roads. — A bill to enjoin the condemnation of land, or gravel thereon, for the construction of a free gravel-road, which alleges that the commissioners have established a second gravel-road, for which plaintiff's land will be taxed; that the gravel on his land can easily be used for the construction of the second road; and that the cost of its construction will be much greater if the gravel is taken for the first road,—cannot be maintained, as Rev. St. Ind. 1881, §§ 896, 905, relating to assessment of damages to land by the construction of such roads, furnish an adequate remedy.—*Smith v. Goodknight*, Ind., 23 N. E. Rep. 148.

110. INJUNCTION—Trespass.— Where defendants claim that there is a public highway across plaintiff's land, and in order to pass over it have many times torn down plaintiff's fences, and threaten to continue to do so, an injunction will be granted against the trespass, in order to avoid a multiplicity of suits. — *Ladd v. Osborne*, Iowa, 44 N. W. Rep. 235.

111. INNKEEPERS—Gross Negligence.—The delivery of baggage by an innkeeper to an apparent stranger without an effort to verify his claim to the property, and without inquiry as to its ownership, is an act of gross negligence for which the owner may recover, though the innkeeper was merely a gratuitous bailee of the baggage.—*Wear v. Gleason*, Ark., 12 S. W. Rep. 756.

112. INSOLVENCY—Discharge.— Where the claim of a foreign creditor of an insolvent has been presented by the debtor in his schedule filed in composition proceedings, under St. Mass. 1884, ch. 236, and such creditor avails himself of the proceedings, and accepts the dividend made therein, his debt will be deemed to have been "proved," within the meaning of that term as used in Pub. St. Mass. ch. 157, §§ 80, 81, relating to the discharge of insolvent debtors, though he never formally proved his claim, and will be barred by the discharge.—*Murray v. Roberts*, Mass., 23 N. E. Rep. 208.

113. INSURANCE—Conditions.— Where, in an insurance policy the amount of the loss is made payable 60 days from the date of the adjustment of a claim, and the method of adjustment provided for in the policy in respect to the "damage to the property" is, in case the parties are unable to agree, by appraisement of arbitrators, to be selected in the manner therein provided, and the decision of a majority is made "binding and conclusive as to the amount of such loss or damage, but shall not decide the validity of the contract, or any question except the amount of such loss or damage:" *Held*, that such provision is valid, and a prerequisite to the right to institute a suit on the policy.—*Gasser v. Sun Fire Office*, Minn., 44 N. W. Rep. 252.

114. INSURANCE— Assignment of Policy. — A contract between a creditor and his debtor recited that the former had taken out a policy of insurance on the life of the latter to secure payment of his debt and expenses of the insurance, and in consideration thereof the creditor agreed, on payment of the debt and all expenses, to assign to the debtor, "or his legal representatives, all his interest in said insurance which I have, together with all my right, title, and interest in and to said policy:" *Held*, that the debtor's administratrix could recover from the creditor the proceeds of the insurance above the debt and expenses. — *Tateum v. Ross*, Mass., 23 N. E. Rep. 280.

115. INSURANCE—Mutual Benefit.—A provision in a life insurance certificate that "no question as to the validity of an application or certificate of membership shall be raised, unless such question be raised within the first two years from and after the date of such certificate of membership, and during the life of the member therein named," embraces the defense of fraud of the insured and beneficiary in obtaining the certificate. — *Wright v. Mutual Ben. Life Ass'n.*, N. Y., 23 N. E. Rep. 186.

116. INSURANCE—Pleading.—A complaint, in an action for the breach of a contract of life insurance, which contains neither an allegation of non-payment of the policy, nor one from which the non-payment can be implied, is fatally defective.— *Richards v. Travelers' Ins. Co.*, Cal., 22 Pac. Rep. 939.

117. INSURANCE—Reformation.—Where the agent of an insurance company agrees to insure for the benefit and protection of the owner, and receives the consideration for such contract of insurance, but, in writing out the policy, fails to make it express the real contract entered into, equity will reform the policy, if the company is bound to make good the contract which the agent in fact made in its behalf. — *Abraham v. North German Ins. Co.*, U. S. C. C. (Iowa), 40 Fed. Rep. 717.

118. INSURANCE—Cancellation.—In an action on an insurance policy it appeared that plaintiff had obtained the policy in suit and four other concurrent policies at the same time, and had only paid enough to satisfy the premium on three of them. This payment had been applied by the insurance agents to the other policies. After being dunned for the balance, plaintiff, who did not know how the payment had been applied, returned two of the policies on which the premium had been paid, and the company canceled the policy in suit: *Held*, that the evidence justified a finding that the policy was canceled by agreement between the parties. *Von Wien v, Scottish Union, etc. Ins. Co.*, N. Y., 23 N. E. Rep. 123.

119. INSURANCE— Reformation. — Where, by mutual mistake, a policy incorrectly describes the land on which the insured building stands, equity will reform the policy. — *German Fire Ins. Co. v. Gueck*, Ill., 23 N. E. Rep 112.

120. INTOXICATING LIQUORS—Physicians. — Laws Iowa 1888, ch. 71, provides that "no person shall sell, keep for sale, give away, exchange, barter, or dispense any intoxicating liquors, for any purpose whatever," otherwise than as provided in this act; and it further provides that registered pharmacists may obtain permits authorizing them to sell and dispense intoxicating liquors for pharmaceutical and medicinal purposes, etc.: *Held*, that physicians not holding such permits cannot dispense intoxicating liquors in putting up prescriptions for their patients. — *State v. Benadone*, Iowa, 44 N. W. Rep. 218.

121. INTOXICATING LIQUORS—Nuisance. — A complaint under Pub. St. ch. 101, §§ 6, 7, for keeping and maintaining a tenement used for the illegal keeping and the illegal sale of intoxicating liquors, defendant being licensed to sell intoxicating liquors to be drunk on the premises, is not sustained by proof of a single sale to a minor when he was in company with two adults. — *Commonwealth v. Hayes*, Mass., 23 N. E. Rep. 217.

122. INTOXICATING LIQUORS— Sales by Druggists.—Under the provisions of § 3 of the prohibitory law of 1887, it is discretionary with a druggist to sell intoxicating

liquors upon a proper application therefor; and, in refusing to make such a sale he is not required to give a reason for his refusal. — *Treahey v. Holliday*, Kan., 22 Pac. Rep. 1004.

123. INTOXICATING LIQUORS— Indictment. — An indictment under Rev. St. Ind. 1881, § 5320, prohibiting the sale of intoxicating liquor without a license, with intention that it should be drank, or suffering the same to be drank, in the seller's house, outhouse, yard, garden, or appurtenances thereto belonging, which charges that the defendant, not being licensed, sold intoxicating liquor to a person named, "and did then and there suffered the same to be drank in and about the house where the same was sold," is insufficient. — *Blough v. State*, Ind., 23 N. E. Rep. 153.

124. JUDGMENT — Equitable Relief. — A complaint to have a judgment, and an order denying a motion for a new trial, set aside, which alleges that, owing to the negligence, fraud, or mistake of plaintiff's attorney in not having an undertaking on appeal filed within the time required by law, the appeal from the judgment and order was dismissed, and that the judgment and order were and are unjust, inequitable, and contrary to law, but which makes no charge of fraud against defendant, nor of collusion between defendant and plaintiff's attorney, does not state a cause of action. — *Davis v. Chalfant*, Cal., 22 Pac. Rep. 972.

125. JUDGMENT — Sale. — The title of a purchaser in good faith, which rests upon a voidable decree in chancery, the purchase being made after the entry thereof, and before a writ of error thereto is sued out, is not affected by a subsequent reversal of the decree.— *Stout v. Gully*, Colo., 22 Pac. Rep. 954.

126. JUDGMENTS—Scire Facias. — *Scire facias*, may be prosecuted by the assignee of a judgment in the name of the assignor, where he alleges a *bona fide* assignment, and also that there is a sum unpaid on the execution rightfully belonging to the assignee.—*McRoberts v. Lyon*, Mich., 44 N. W. Rep. 160.

127. JUDGMENT FOR COSTS AGAINST PROSECUTOR. — Where a judgment was rendered by a justice of the peace, in a criminal prosecution for a violation of the prohibitory liquor law, against the prosecuting witness, for costs, and where no finding was made that prosecution was instituted by the prosecuting witness without probable cause, or without reasonable grounds, or from malicious motives: *Held*, that the judgment is void.—*Foss v. Jones*, Kan., 22 Pac. Rep. 1001.

128. JUDGMENT — Assignment. — A bill to set aside an assignment of a judgment on the ground that it was given merely as security for a debt, contained an allegation that defendant's title was fraudulent, because the price paid was inadequate: *Held*, that the bill would sustain a decree setting aside the assignment on account of inadequacy of consideration, though the findings stated that the transaction was an absolute sale.—*Morrison v. Smith*, Ill., 23 N. E. Rep. 241.

129. JUSTICE OF THE PEACE—Judgment. — A judgment of a justice which is offered in evidence in the superior court cannot be amended *nunc pro tunc* at the time by the justice rendering the judgment, who is then in court.—*Ramsey v. Cole*, Ga., 10 S. E. Rep. 598.

130. JUSTICE OF THE PEACE—Jurisdictional Amount.— Where the entire amount claimed by plaintiff in his complaint before a justice, and in his reply subsequently filed on appeal to the circuit court, would not have exceeded the justice's jurisdiction at the time of commencing the action, the rendition of a judgment on appeal in excess of the jurisdictional amount is not ground for setting aside the judgment.— *Stair v. Bishop*, Ind , 23 N. E. Rep. 144.

131. LANDLORD AND TENANT—Rent. — The law will not imply a promise to pay rent for premises from the fact that goods have been kept on them with the consent of the owner of the premises, where it appears that the owner of the premises understood that the person leaving the goods expressly refused to pay rent, though the owner did not agree that he should not pay rent. — *Cook v. Medbery*, Mass., 23 N. E. Rep. 225.

132. LIBEL. — A false publication, headed "A School Child Killed by a Teacher," and stating that the teacher had just finished punishing a child, when it coughed, and dropped to the floor, with blood running from its mouth, and died, and that the teacher had been arrested and lodged in jail, and threats of lynching her were freely made, is libelous *per se*. — *Doan v. Kelley*, Ind., 23 N. E. Rep. 266.

133. LIMITATION OF ACTIONS— Administrators. — The limitation does not begin to run against the right of the heirs to sue the administrator for the price of land sold by him until the administrator actually receives the money, though he charges himself with the price as cash received at the time of the sale. — *Rudolph v. Underwood*, Ga., 10 S. E. Rep. 595.

134. LIMITATION OF ACTIONS.— It is not clearly apparent on the face of the declaration that some of the damages claimed were barred by the staute of limitations; but if this did appear, there being a cause of action set forth for damages not barred, it was too late to demur specially to the former at the trial term, the objection not being one which would be available in arrest of judgment. — *City of Cartersville v. Maguire*, Ga., 10 S. E. Rep. 603.

135. LIMITATION—Absence from State.—Under Rev. St. Ill. ch. 83, § 13, which provides that the statute of limitations shall be suspended during the time the debtor "departs from and resides out of the State," an instruction that in order to suspend the statute the periods of absence must extend so long as to justify the belief that the debtor was not on mere temporary business or social visit is erroneous; the test being the establishment of a fixed abode outside the State, and not the mere length of the absence. — *Pells v. Snell*, Ill., 23 N. E. Rep. 117.

136. LIS PENDENS—Attachment. — In an ordinary action for the recovery of money only against a debtor, in which an attachment is issued, and levied upon an equitable interest of the debtor in real estate, and legal title to which is in a person who is not a party to the action, there is no *lis pendens* against a subsequent purchaser for value, and without knowledge, from the holder of the legal title.—*Travis v. Topeka Supply Co.*, Kan., 22 Pac. Rep. 991.

137. MARRIED WOMAN— Enticing Away Husband.—A married woman has at common law a right of action against a person who entices away her husband, and deprives her of his society.—*Bennett v. Bennett*, N. Y., 23 N. E. Rep. 17.

138. MARRIED WOMEN.—In Maryland, *assumpsit* cannot be maintained against the executors of a married woman for menial services performed for her, on her verbal agreement to pay for them, but in which her husband did not join, though it is alleged that she was possessed of a separate estate, and that her husband had no estate at all; the case not being within any of the statutory exceptions to the common law disabilities of married women.—*Davis v. Carrol*, Md., 18 Atl. Rep. 965.

139. MARRIED WOMEN — Certificate of Acknowledgment.—Under Rev. St. Tex. art. 4313, a certificate which merely recites, that "the grantors appeared before me in person, and acknowledged that they signed sealed, and delivered the said instrument as their free and voluntary act, for the use and purposes therein set forth, including the release and waiver of the rights of homestead," is defective, and in the absence of evidence that the wife was examined according to the statute, the heirs of the wife are not estopped to deny title in one who holds by purchase of the grantee.— *Williams v. Ellinsworth*, Tex., 12 S. W. Rep. 746.

140. MASTER AND SERVANT—Negligence.—In an action against a railway company for personal injuries, the complaint alleged that plaintiff was employed in repairing the track and road bed of defendant; that the gravel train was in control of a careless and incompetent engineer, and that defendant knew he was careless and incompetent, but negligently retained him in its service; that plaintiff was ignorant of the character of

the engineer, that, under the orders of his foreman, he went upon the train to assist in unloading the gravel, and the engineer carelessly and negligently, and without warning, started the train with a sudden jerk, whereby plaintiff was throw to the ground and injured: *Held*, that the complaint stated facts sufficient to show a cause of action.—*Lake Shore, etc. Ry. Co. v. Stupak*, Ind.. 23 N. E. Rep. 246.

141. MASTER AND SERVANT—Evidence.—In an action for injuries received by plaintiff, while in a trench, from the falling of brick from a wheelbarrow run by a fellow-servant, evidence that such fellow-servant "was generally reputed to be infirm in the senses of sight and hearing, and in physical strength," is admissible, when offered to show, not his incompetency, but that the master did or would have known of such incompetency by the exercise of reasonable diligence, had the other evidence shown such infirmity.—*Monahan v. City of Worcester*, Mass., 23 N. E. Rep. 228.

142. MASTER AND SERVANT—Negligence.— A breakman was instantly killed while attempting to shackle cars from each of which sticks of lumber projected. It was daylight at the time; and the shackling might have been made safely by stooping down between the timbers, or by crossing over, and making it upon the other side of the car, from which no timber projected: *Held*, that he was not "in the exercise of due care and diligence at the time," within the meaning of those words as used in St. Mass. 1887, ch. 270, §§ 1. 2, giving a right of action to the next of kin of an employee instantly killed as the result of the negligence of the employer.—*Lothrop v. Fitchburg R. Co.*, Mass., 23 N. E. Rep. 227.

143. MASTER AND SERVANT—Negligence.—A car inspector and repairer in the employ of a railroad company, who voluntarily goes to work between cars, knowing that a newly loaded car is liable to be "kicked" up against the cars behind him, and thus push them forward upon him, is guilty of contributory negligence.—*Whitmore v. Boston, etc. R. Co.*, Mass., 23 N. E. Rep. 220.

144. MASTER AND SERVANT—Wrongful Discharge.—In an action for breach of an alleged contract of hiring for one year, where the contract is denied, a letter written by defendants the day before the contract was made, saying they wished to see plaintiff the next day with reference to securing his services as foreman for the coming year, is admissible in evidence, after the contract was made.—*Hinchcliffe v. Koontz*, Ind. 23. N. E. Rep 271.

145. MASTER AND SERVANT—Negligence.—Where a servant is regularly employed as superintendent, having multifarious duties, which he may have to perform at any time while on his master's premises, the mere fact that he is leaving the premises, to attend to his private business does not affect his relation as servant.—*Adams v. Iron Cliff Co.*, Mich., 44 N. W. Rep. 271.

146. MASTER AND SERVANT—Negligence.—In an action for damages resulting from personal injury received by reason of the reverse lever of a locomotive becoming detached and changing the motion of the engine, and by which it was sent violently against a car upon which the plaintiff in the action was standing, a question was presented on the trial as to whether the lever became detached by reason of a defective construction of the "reverse lever," "quadrant," and "dog," or by the want of care of the engineer: It was *held*, upon the evidence submitted, that the question was a proper one for the jury, there being some evidence of a defect in the operation of the machinery.—*Burlington, etc. R. Co. v. Wallace*, Neb., 44 N. W. Rep. 223.

147. MEASURE OF DAMAGES—Sale. — The measure of damages for breach of contract to sell and deliver goods being the difference between the contract price and the market price at the time fixed for delivery, evidence of the latter need not be confined to the price of goods in the quantity contracted for.—*Faulkner v. Closter*, Iowa. 44 N. W. Rep. 208.

148. MEASURE OF DAMAGES—Negligence.—In an action for injuries to plaintiff's wife, where a complaint alleges that plaintiff was conducting a large millinery business and his wife acted as manager thereof; that by reason of her injuries he was deprived of her services as such manager, to his damage—plaintiff can recover for such loss of service, and evidence tending to show the amount of damage sustained on that account is admissible.—*Citizens' Street Ry. Co. v. Twiname*, Ind., 23 N. E. Rep. 159.

149. MEASURE OF DAMAGES — Negligence. —In an instruction as to the measure of damages, it is error to use as an illustration though stated not to be a controlling rule, such sum as, placed at interest, would produce the difference between plaintiff's earning capacity before and after the injury, as such an amount would be a perpetuity.— *Kinney v. Folkerts*. Mich. 44 N. W. Rep. 152.

150. MECHANICS' LIENS. — A judgment giving a mechanic's lien on premises in an action brought under Act Mich. 1887, No. 270, is void, that act having been declared unconstitutional.—*Snell v. Race*, Mich., 44 N. W. Rep. 286.

151. MECHANICS' LIENS—Contracts.—Under Code Civil Proc. Cal. § 1183, (as amended in 1887), and Section 1184: *Held*, that where the contract price is less than $1,000, the contract need not be in writing, nor 25 per cent. of the price reserved until after completion of the contract.—*Sindlinger v. Kerkow*, Cal., 22 Pac. Rep. 932.

152. MORTGAGE—Void Foreclosure.—Where at a void foreclosure sale the mortgagee becomes the purchaser of the mortgaged premises, and enters into the possession thereof, and then sells and attempts to convey such premises by deed, such deed operates as an assignment of the mortgage debt, as the mortgage securing the same, to the grantee in such deed, and each successive deed to said premises by persons holding under such mortgage must have the same effect. — *Cook v. Cooper*, Oreg., 22 Pac. Rep. 945.

153. MORTGAGES— Acceptance. — Where a mortgage runs to several creditors, and has been delivered for the benefit of all, none of whom have ever repudiated it, an acceptance by each need not be shown.—*Shelden v. Erskine*, Mich., 44 N. W. Rep. 146.

154. MORTGAGE FORECLOSURE—Sale.—Where a judgment of foreclosure of the mortgage bonds of a telegraph company recites the amount due on the bonds and refers the matter to a referee to report the sums due on the bonds, the names of the owners thereof, and and also of the coupons issued with the bonds, and orders the mortgaged property sold unless "the amount herein found" should be paid, a sale made by the referee before he reported the amount of the bonds, and confirmed by the court, is a harmless irregularity, where the mortgagor makes no complaint, and the entire proceeds of the sale are exhausted by claims paramount to the bonds.—*Farmers' Loan & Trust Co. v. Bankers' & Merchants' Tel. Co.*, N. Y. 23 N. E. Rep. 178.

155. MUNICIPAL CORPORATIONS— Nuisance.—Where a municipal corportion is, by its charter, authorized, by ordinances or by-laws, "to remove and abate any nuisance injurious to the public health," and "to do all the acts and make all regulations which may be necessary and expedient for the preservation or the suppression of disease," it may, at its election, in cases falling within some recognized head of equity jurisdiction, resort to a court of equity to aid it in enforcing its public duties to preserve the public health of its inhabitants, and maintain in its own name an action to abate a public nuisance within its corporate limits affecting the public health of the municipality.—*Village of Pine City v. Munch*, Minn., 44 N. W. Rep. 197.

156. MUNICIPAL CORPORATIONS—Fire Limits.—The Dalton city charter, § 6, which gives the mayor and common council power to abate nuisances, public and private, and to pass all ordinances they may deem necessary for preserving the good order and good government of the city, confers, by necessary implication, authority on the mayor and council to establish fire limits.—*Ford v. Thrailkill*, Ga., 10 S. E. Rep. 600.

157. MUNICIPAL CORPORATION—Contracts.—Where the

sewer board of a city properly advertise and receives bids for sewer-pipe, and awards the contract to the lowest bidder, who furnishes the pipe in accordance with the bid and award, and it is used by the board, the contractor can recover therefor though the contract was not in writing, in accordance with a provision of the city charter that when the board shall have made their award they shall furnish the city attorney with plans and specifications, and shall draw the necessary contract, and when approved by the board it shall be executed by the board, under the seal of the city and be kept with the board.—*Carey v. City of East Saginaw*, Mich., 44 N. W. Rep. 168.

158. MUNICIPAL CORPORATION—Defective Streets.—In an action against a city for personal injuries caused by the alleged defective construction of two bridges, one a wagon way, and the other a foot bridge, whereby an open space over a gutter was left between them, about ten feet long, four feet wide, and two feet deep, expert evidence is not admissible on the question as to whether the opening was dangerous.—*Shelley v. City of Austin*, Tex., 12 S. W. Rep. 753.

159. MUNICIPAL CORPORATIONS—Defective sidewalks.—A city incorporated under the general laws of Texas is liable for injuries caused by the omission or negligence of its street commissioner to perform his duties in keeping the public sidewalks in a safe condition.—*Bauguss v. City of Atlanta*, Tex., 12 S. W. Rep. 750.

160. MUNICIPAL CORPORATIONS—Defective Streets.—In an action against a city for damages to plaintiff's horse, resulting from obstructions in the street, caused by the overflow from a culvert of insufficient size, it is error to exclude plaintiff's evidence as to the size of such culvert, and the consequent obstruction of the street with rubbish.—*Hazzard v. City of Council Bluffs*, Iowa, 44 N. W. Rep. 219.

161. MUNICIPAL CORPORATIONS — Eminent Domain.—Under Rev. St. Ind 1881, § 3266, relating to the condemnation of private property by a municipal corporation for public purposes, and providing for an appeal from the appraisement of the commissioners appointed for such purposes, an aggrieved person cannot maintain injunction on the ground that the commissioners thus appointed were not disinterested; his remedy is by appeal.—*Bass v. City of Fort Wayne*, Ind., 23 N. E. Rep. 259.

162. MUNICIPAL CORPORATIONS—Police Power.—Billiard saloons and pool rooms are proper subjects of police regulation and surveillance. Where the only legislative authority conferred by the charter of a city is to license such places by ordinance, the power to license is to be construed as a power to regulate through the license ordinance, and the city council may thereby impose such reasonable terms and conditions as may be necessary to make the license issued in pursuance thereof efficacious as a police regulation.—*State v. Pamperin*, Minn., 44 N. W. Rep. 251.

163. NEGLIGENCE—Delay in Suing.—Where an action for damages caused by being jolted from a wagon by a log in the road was begun only a few days before the six years' bar was complete, it is error to instruct the jury to take no account of the delay in suing.—*Shadock v. Alpine Plank Road Co.*, Mich., 44 N. W. Rep. 158.

164. NEGLIGENCE—Defective Bridge.—No action by a person injured through a defect in a bridge lies against the person who has contracted with the county to keep such bridge in repair, where no bond was required for the faithful performance of the contract.—*Williams v. Stillwell*, Ala., 6 South. Rep. 914.

165. NEGLIGENCE—Opinion Evidence.—In an action against a town for injuries received by the breaking of a stringer of a bridge on account of an internal dry rot, it is competent for the professional builder of the bridge to testify as to how long such a stringer usually lasts, as bearing on the degree of care required in its examination.—*Blank v. Township of Livonia*, Mich., 44 N. W. Rep. 157.

166. NEGLIGENCE.—Plaintiff entered a public dining-room by a side door from the hall, to which she was accustomed, but, having dined at a table further in the rear than usual, opened, for the purpose of retiring, a side door, and, without observing where she was going, stepped out, and was thrown down the cellar stairs, upon which the door opened: *Held*, that a verdict was properly directed for defendant, though the door was not locked, and there was no sign indicating that it was not to be used.—*Gaffney v. Brown*, Mass., 23 N. E. Rep. 233.

167. NEGLIGENCE—Defective Appliances.—A coal merchant, furnishing tackle for use by his customers in unloading coal from the barge in which it is delivered, is liable to a servant of the customer for personal injuries sustained by reason of a defect in such tackle.—*Hayes v. Philadelphia & R. Coal & Iron Co.*, Mass., 23 N. E. Rep. 225.

168. NEGOTIABLE INSTRUMENTS — Indorsers.—The holder of a note cannot recover against the indorser, where the latter notifies him, after maturity, that the maker is in failing circumstances, is disposing of his property, and being sued by his other creditors, and requests him to sue on the note, which he fails to do until the fourth day of the next term of court.—*Thompson v. Campbell*, Ind., 23 N. E. Rep. 267.

169. NEGOTIABLE INSTRUMENT—Sunday.—Though notes and a mortgage to secure the same are void if executed on Sunday, a payment on a secular day on such notes is a ratification thereof, and both notes and mortgage are thenceforth valid obligations.—*Russell v. Murdock*, Iowa, 44 N. W. Rep. 237.

170. NEGOTIABLE INSTRUMENTS—Pleading.—In an action on a promissory note, pleas of failure of consideration and fraudulent misrepresentation, which do not state the facts constituting such defenses, are demurrable.—*Carmelich v. Mims*, Ala., 6 South. Rep. 913.

171. NEGOTIABLE INSTRUMENT—Evidence.—In an action on a note, questions asked of plaintiff as a witness, whether any part of the note had been paid, and whether he was the holder of the note, are harmless, as non-payment of the note would be presumed till proof was given to the contrary, and the production of the note made plaintiff *prima facie* its holder and owner.—*Hawxhurst v. Ritch*, N. Y., 23 N. E. Rep. 176.

172. NEGOTIABLE INSTRUMENT—Indorsement.—Where a negotiable promissory note, after its execution and delivery, is indorsed by the payee, and then indorsed by third person, and is then sold by the payee to still another person, all before the maturity of the note, both the indorsers will be held to be ordinary indorsers.—*Cornett v. Hafer*, Kan., 22 Pac. Rep. 1015.

173. NOTARY PUBLIC — Negligence.—Where a person executing a mortgage has been introduced to a notary by the mortgagee's agent, and the notary sees the person so introduced execute the mortgage by signing it with the name given him by the mortgagee's agent, who witnesses the signature, the mortgagee cannot, on discovering that the mortgage was not executed by the owner of the land, maintain an action against the notary's sureties for his alleged negligence in taking and certifying to the acknowledgment of the pretended owner.—*Overacre v. Blake*, Cal., 22 Pac. Rep. 980.

174. OFFICER—Compensation.—A police officer of a city who, upon receiving notice of his discharge from the force, yields to the demand made upon him for the badge of his office, and the city property in his possession, and apparently acquiesces in his discharge for nearly ten years, will be deemed to have abandoned the office, and to have waived all claim thereto, so far, at least, as to relieve the city from any duty to pay him his salary.—*Phillips v. City of Boston*, Mass., 23 N. E. Rep. 202.

175. OFFICERS—Term.—At the first election held in a newly organized county, the county officers elected at such election will hold their offices only until the next general election to be held thereafter, and until their successors shall be elected and qualified, although such first election may be held on the same day on which the general election in the State is held.—*Killion v. Herman*, Kan., 22 Pac. Rep. 1026.

176. PARENT AND CHILD—Services.—There is no implied promise by a step father to pay for services rendered

after she became of age by a step-daughter, who lived in his family from the time she was nine years old until her marriage at twenty-six; she having performed the same duties, and lived as a member of the family, receiving her board, clothing, and money from time to time, the same after as before she became of age.—*Harris v. Smith*, Mich., 44 N. W. Rep. 170.

177. PARENT AND CHILD—Damages.—The action being by a mother against a railroad company for causing the death of her minor son, and the declaration counting apparently on the homicide, and not on the loss of service, as the grievance to be redressed, and there being no claim of right in the mother to the son's service or to recover hire for the same, the court below was justifiable in treating the declaration as not amendable, and in dismissing the action.—*Smith v. East & West R. Co. of Alabama*, Ga., 10 S. E. Rep. 602.

178. PARTNERSHIP—Accounting.—The obligation of a partner to account with his copartners after the dissolution of the partnership, where there has been no fraudulent application or investment of the partnership property by him, nor agreement making him the liquidating partner, or otherwise giving him possession or control of the partnership assets, is not a continuing or subsisting trust within the meaning of section 4974 of the Revised Statutes.—*Gray v. Kerr*, Ohio, 23 N. E. Rep. 136.

179. PRACTICE IN CIVIL CASES—Continuance.—Where defendant's testimony shows that one of the witnesses had been duly subpœnaed and was absent without his procurement or consent, that he expects to procure his presence at the next term of court, and that the facts which he expects to prove by the absent witness are material, defendant is entitled to a continuance.—*Waldrup v. Maxwell*, Ga., 10 S. E. Rep. 597.

180. PRACTICE IN CIVIL CASES—Commencement of Action.—Under How. St. Mich. § 8723, providing that, in case of an action "duly commenced" within the time limited by the statute of limitations, a new action may be commenced within one year after reversal of judgment therein, and section 7291, providing for commencement of actions by filing a declaration and entering a rule to plead within twenty days after service of a copy thereof personally on the defendant, an action is not "duly commenced" without personal service.—*Detroit Free Press Co. v. Bagg*, Mich., 44 N. W. Rep. 149.

181. PRINCIPAL AND AGENT—Fraud.—A purchase, procured by an agent for his principal, of property which in fact belongs to the agent, but which he represents as belonging to another, is not absolutely void, but is voidable at the will of the principal on discovering the fraud.—*Disbrow v. Secor*, Conn., 18 Atl. Rep. 981.

182. PRINCIPAL AND AGENT—Evidence.—Where plaintiffs' right of recovery is dependent upon proof that a certain person was defendant's agent and the fact of such agency is denied by the defendant, it is reversible error to refuse to permit defendant to disprove the agency by the testimony of the alleged agent.—*Rope v. Hess*, N. Y., 23 N. E. Rep. 128.

183. PUBLIC LANDS—School Lands.—The third section of the act of admission of the State of Kansas into the Union irrevocably granted to the State, for the use of schools, the sixteenth and thirty sixth sections of the public lands; and that grant embraced those sections of Indian lands within the State in which the Indians had a right of possession only.—*Roberts v. Missouri, etc. Ry. Co.*, Kan., 22 Pac. Rep. 1006.

184. PUCLIC LANDS—Taxation.—A pre-emption claimant under the laws of the United States made final proof, paid for his land, and received from the proper officer a final receipt or certificate. Subsequently the commissioner of the general land-office suspended further proceedings in regard to such entry solely because of an irregularity in the method of making said final proof, and directed that further proof be submitted: *Held*, that as against the pre-emptor the land was subject to taxation from the date of the receipt, notwithstanding the fact that the order in respect to further proof had not been complied with. — *State v. Hunter*, Minn., 44 N. W. Rep. 201.

185. PUBLIC LAND—Actual Settlers.—Actual residence is not essential to a settlement on swamp land, as it is not land "suitable for cultivation." — *McIntyre v. Sherwood*, Cal., 22 Pac. Rep. 937.

186. PUBLIC RECORDS—Right to Examine. — Act Mich. 1889, No. 205, provides that the officers having the custody of any county, city, or town records shall furnish proper and reasonable facilities for the inspection and examination of the records and files in their offices, and for making memoranda or transcripts therefrom, to all persons having occasion to make examination of them for any lawful purpose: *Held*, that the examination of city tax sales books, made up by the receiver of taxes, and by him handed over to the city treasurer, could not be refused on the ground that they were not public records, although there is no express statutory provision that such books shall be kept. — *Burton v. Tuite*, Mich., 44 N. W. Rep. 282.

187. QUIETING TITLE. — In an action to quiet title between tenants in common, where the title of each of them is derived from a common grantor neither of the parties to the action can deny the validity of the common source while he claims or remains in possession thereunder. — *Millis v. Roof*, Ind., 23 N. E. Rep. 255.

188. QUO WARRANTO—Jurisdiction.—Under Const. Cal. art. 6, § 5, providing that "the superior court shall have original jurisdiction in and in all other cases in which the demand amounts to three hundred dollars," and providing that it shall have power to issue writs of *quo warranto*, it has jurisdiction in an action in the nature of *quo warronto* brought under the provisions of Code Civil Proc. §§ 803, 809, to oust a person from office, and recover a penalty of $5,000 for unlawfully holding such office.—*People v. Bingham*, Cal., 22 Pac. Rep. 1039.

189. RAILROAD COMPANIES—Accidents at Crossings. — If a person with a team and wagon crossing a railroad upon the highway of a village is injured by an engine, running rapidly backward at the rate of thirty miles an hour, without any whistle being sounded, bell rung, or any other signal given, and such person has timely looked both ways up and down the track to ascertain if there is any danger in crossing, and fails to discover the engine approaching, and there are complicated circumstances, as falling snow, a gale of wind, and other things calculated to deceive or throw him off his guard: *Held*, whether he is guilty of negligence in attempting to cross the track, under the particular circumstances of the case, is a question of fact for the jury.—*Atchison, etc. R. Co. v. Morgan*, Kan., 22 Pac. Rep. 994.

190. RAILROAD COMPANIES—Trespass. — Where a railway company directs and procures a trespass to be committed by a contractor and his employees constructing its road-bed, it is liable with those who committed it.—*Chicago, etc. R. Co. v. Watkins*, Kan., 22 Pac. Rep. 985.

191. RAILROAD COMPANY—Damages.—A city ordinance authorized the defendant railroad company to construct its railroad through one of the city streets, and authorized and required it to construct an embankment at the intersection of the street with another street on which plaintiff's property abutted, so as to carry public travel on the cross-street over the track. An embankment was constructed, under the direction of the city engineer, on the cross-street: *Held*, in an action for damages sustained thereby, that, as the city could have constructed the embankment without liability to plaintiff, it could authorize defendant to construct it, and defendant was not liable to plaintiff for damages caused thereby.—*Ottenot v. New York, etc. Ry. Co.*, N. Y. 23 N. E. Rep. 169.

192. RAILROAD COMPANY—Negligence.—Rules of a railroad company requiring that engineers, when the view is obscured, shall control their engines so that they can stop within range of their vision, that delayed trains must run with great caution, that all trains must ap-

proach stations with reduced speed, and that in approaching switches the greatest care must be taken, do not increase the liability of engineers, but simply call their attention to their common law duty of using due skill and diligence. — *Lake Shore, etc. R. Co. v. Parker*, Ill., 23 N. E. Rep. 287.

193. RAILROAD COMPANY—Defective Highway. — The fact that plaintiff knew of the defective condition of a highway crossing over defendant's railroad track, which was not necessarily dangerous, and attempted to drive across it with a loaded wagon, when he was injured, is not of itself conclusive proof of contributory negligence; but it is for the jury to determine, under all circumstances, whether plaintiff was justified in attempting to cross the roadway notwithstanding the defect, and whether in doing so he used due care.—*St. Louis, etc. Ry. Co. v. Box*, Ark., 12 S. W. Rep. 757.

194. RELEASE AND DISCHARGE—Contract.—Defendant contracted to build a ship for a company which assigned its rights to plaintiff before receiving the ship. Pending the adjustment of accounts between plaintiff and assignor it was agreed that plaintiff should pay the balance of the price to testator, and the latter should deliver to a third person two bills of sale, one to plaintiff, and one to its assignor, and should receive a receipt conditioned that one of the bills should be delivered to the one entitled to the ship, and the other returned to plaintiff. The receipt also contained a condition that the bill of sale should not be delivered to plaintiff, unless plaintiff's assignor acquitted testator "for full performance of the contract for the building of said ship:" *Held*, that plaintiff's acceptance of the bill of sale estopped it from maintaining an action for breach of contract, on the ground that testator had not built the ship according to contract.—*Oregon Imp. Co. v. Roach*, N. Y., 23 N. E. Rep. 168.

195. REAL ESTATE AGENTS— Commissions.—P and O, real estate agents, who were respectively commissioned to sell two distinct tracts of land, agreed to work together, and contracted to divide commisions with plaintiff, if he should find a purchaser. Plaintiff introduced defendant to P, who then took him to the owner of the tract, which he bought, paying the commission to P, plaintiff not being present. P testified that, in pursuance of an agreement between all, O then took defendant to the owner of the other tract, which he also purchased, paying the commission to O. O testified that plaintiff was no party to this transaction. There was no evidence that defendant had agreed to pay plaintiff his share of the commissions, or that it was demanded of him, before he paid it over to O and P: *Held*, that defendant was not liable therefor.—*Ranney v. Donovan*, Mich., 44 N. W. Rep. 276.

196. REMOVAL OF CAUSES—Separable Controversy.—In an action by resident tax-payers against county officials and bondholders, one of whom is a non-resident, to restrain the collection of a tax levied for the payment of alleged illegal bonds, and to cancel the bonds, there is no separable controversy with relation to the county officials and bondholders.—*Anderson v. Bowers*, Iowa, 40 Fed. Rep. 708.

197. REMOVAL OF CAUSES—Practice.—When an action is removed from a State court to a federal court, the action continues the same, and all rulings made or opinions expressed in the highest court of the State are treated precisely as if they had been made in the federal court; otherwise if the action in the State court be discontinued, and a new action begun in the federal court.—*Cleaver v. Traders' Ins. Co.*, U. S. C. C. (Mich.), 40 Fed. Rep. 711.

198. RES ADJUDICATA. — One pleading *res adjudicata* must put in evidence the declaration, verdict, and judgment in the former suit; and where such evidence is not introduced his plea is unavailing, even though an alleged copy of the declaration, verdict, and judgment is attached, and made a part of the plea.—*Findley v. Johnson*, Ga., 10 S. E. Rep. 504.

199. RES ADJUDICATA.—In an action upon a foreign judgment, the record of the judgment offered in evidence showed a declaration, four pleas, the fourth being a plea of set-off, issue joined upon the pleas, a trial of the issues, and a general verdict. It also appeared that at the trial defendant offered to prove his plea in set-off, and that the presiding justice ruled, as matter of law, that the claim pleaded in set-off could not be sustained, and that no evidence in support of it could be admitted, to which ruling defendant excepted: *Held*, that the items contained in the plea of set-off were *res adjudicata*.—*Green v. Sanbon*, Mass., 23 N. E. Rep. 224.

200. SALE—Rescission.—To adjust a business dispute, it was agreed by one of the parties and the attorney of the other that B should reship certain goods, about which the dispute arose, from Topeka to Springfield, Ohio, by express, charges prepaid. B shipped the goods by freight, instead of by express, and they were lost: *Held*, that a verdict and judgment against B for the value of the goods will not be reversed, under the state of facts existing in this case.—*Barkley v. Clark*, Kan., 22 Pac. Rep. 1025.

201. SALE—Delivery.—A delivery of personal property by a vendor to a vendee may be actual or symbolical, but it must be some act indicating a purpose to pass possession of the property absolutely to the vendee, in order to entitle the vendee to maintain an action of replevin for its possession.—*Graves v. Damrow*, Neb., 44 N. W. Rep. 234.

202. SALE—Evidence. — In an action on account for goods sold by a traveling salesman, it is competent for plaintiff to testify that he personally shipped the goods ordered, and to produce a copy of the account in order to describe the goods, defendant's order for the same being afterwards produced by the salesman.—*Rosenthal v. Miller*, Iowa, 44 N. W. Rep. 245.

203. SEDUCTION—Evidence.—On indictment for seduction, letters, purporting to be from defendant, tending to show the relation between defendant and the prosecutrix, are admissible, where the prosecutrix and another witness testify that they are in defendant's handwriting, and a third witness testifies to having carried letters from defendant to prosecutrix, and answers from her to him.—*State v. Bell*, Iowa, 44 N. W. Rep. 244.

204. SPECIFIC PERFORMANCE—Mutuality.—Defendants sold land to plaintiff, the conditions of the agreement being that if plaintiff constructed a proposed railroad, and had trains running thereon, within a year, then defendants should deed said property to plaintiff, at which time the consideration should become due and payable, and plaintiff then agreed to pay said sum. For the purpose of constructing the road, plaintiff was authorized to enter and take immediate possession. Plaintiff did, and the road was completed and trains running thereon within a year: *Held*, that it thereby became a mutual contract, executed in part by plaintiff.—*Byers v. Denver Circle R. Co.*, Colo., 22 Pac. Rep. 951.

205. SPECIFIC PERFORMANCE — Defective Title. — The rule that when a vendor is unable to comply with the contract, by reason of not having the legal title to all the land, the vendee is entitled to specific performance for such as he has title, with compensation for the residue, does not apply when the vendee knows at the time of purchase that the vendor has not full title.—*Knox v. Spratt*, Fla., 6 South. Rep. 924.

206. SUPREME COURT JURISDICTION—Certiorari.—It is the settled practice of this court not to exercise its original jurisdiction except in cases *publici juris*, or in cases where it is shown that a refusal to take jurisdiction would practically amount to a denial of justice.—*In re Rogers*, Colo., 22 Pac. Pep. 1053.

207. TAXATION—Assessments.—Under Rev. St. Ill. ch. 24, § 145, which provides that the hearing of objections to special assessments shall be conducted as other cases at law, the court has no power at such hearing to change the assessment upon inspection of the assessment roll and plat of the land affected without any evidence showing that the assessment was improperly made.—*De Koven v. City of Lake View*, Ill. 23 N. E. Rep. 240.

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208. TAXATION—Liens.—A sale of land on a school-fund mortgage will not divest city tax liens, where the purchasers are the original mortgagors, though they had sold the land to one who assumed the mortgage, and the auditor agreed to continue the loan as a loan to such purchaser.—*City of Logansport v. McConnell*, Ind., 23 N. E. Rep. 264.

209. TAX — Deed — Evidence. — Where a tax-deed is proved only by a supposed record copy of the same, found in the office of the register of deeds, and such copy purports to show that the deed was acknowledged before a probate judge, but does not show that such judge, ever attached the seal of his office to the acknowledgment, and there is no evidence showing that such seal was ever attached, *held*, that the proof of the existence of the tax-deed is insufficient.—*Kelley v. McBlain*, Kan., 22 Pac. Rep. 994.

210. TAX SALE— Redemption. — Rev. St. Ind. 1881, §§ 6474, 6475, do not apply where taxes have accrued against two lots owned by the same person, who, after paying the taxes on one lot, mortgages it, and allows it to be sold on foreclosure, but afterwards conveys the other lot, with the taxes unpaid, and the county auditor seizes and sells the mortgaged lot to satisfy the taxes due on the sold lot.—*Cockrum v. West*, Ind., 23 N. E. Rep. 140.

211. TAX-TITLES—Co-tenant.—Where the husband of a co-heiress purchases a tax-title upon the land of the heirs, and such husband and wife are not in the possession of such land, *held*, that the tax-title not void, as between such tax title holder and the mortgagee, claiming under a mortgage given by the father of such heirs.—*Broquet v. Warner*, Kan., 22 Pac. Rep. 1004.

212. TESTAMENTARY CAPACITY—Opinion Evidence.—A subscribing witness to a will is not competent to testify to the opinion which he has formed as to the soundness of testator's mind, in part from what he has seen and heard since the execution of the will, and in part from what he saw at the time.—*Williams v. Spencer*, Mass., 23 N. E. Rep. 105.

213. TRESSPASS—Quare Clausum Fregit.—A plaintiff cannot recover in trespass *quare clausum* when he negatives possession in his pleadings; for without possession, actual or constructive, trespass cannot be maintained.—*Moon v. Avery*, Minn., 44 N. W. Rep. 957.

214. TRIAL—Verdict.—A verdict or a jury entitled in the name of the plaintiff against one of the defendants by name, and designing numerous other defendants as "et al.," is good against all those shown by the record to be the co defendants of the one specifically named in the verdict.—*Knox v. Gregorious*, Kan., 22 Pac. Rep. 981.

215. TRIAL—Pleading.— Where the parties go to the trial before the cause is actually at issue, they waive all questions which would otherwise be available to them because of the absence of the necessary pleadings.—*Citizens, Bank v. Bolen*, Ind., 23 N. E. Rep. 146.

216. USURY—Judgments.—To support the defense of usury in an action on notes given in satisfaction of judgments confessed on other notes between the same parties which were usurious, the burden is upon defendants to show that such judgments were collusive, and that their object was to evade the laws against usury.—*Stoddard v. Lloyd*, Iowa, 44 N. W. Rep. 207.

217. VENDOR AND VENDEE—Defective Title.—At law, without considering what relief may be granted in equity upon a proper showing, a vendor of real property, who has contracted that, if the vendee strictly performs on his part, he will thereafter, on demand, convey the property by good and sufficient deed in fee-simple, must have a perfect title when such demand is made.—*Gregory v. Christian*, Minn., 44 N. W. Rep. 202.

218. VENDOR AND VENDEE — Payment. — The vendor delivered to the vendee, at the same time, the contract for the sale of land, and also what purported to be receipts by him to the vendee for the payment of money, but which were in the handwriting of a third party: *Held*, that the receipts, in connection with the fact of their delivery with the contract, were admissible in evidence against the administrator of the vendee, as an act tending to prove that the vendor intended them to stand as his receipts for money paid on the contract.—*In re Mosseau's Estate*, Minn., 44 N. W. Rep. 193.

219. VENDOR AND VENDEE—Contracts.—A contract for sale of land evidenced by a receipt, running to a real estate exchange, of "$100, as earnest on purchase of my residence," describing it, "for the sum of $20,500, cash; possession given May 15, 1888,"—cannot be enforced by the seller, though the purchaser afterwards made a payment thereon, and wrote the seller that he wished to close "that deal up," and asked for a deed, and promised to give a check for the same, as the memorandum does not specify any purchaser, or times of payment, or the agreement that the property was to be taken subject to a mortgage, which was to be deducted from the price named.—*Shipman v. Campbell*, Mich., 44 N. W. Rep. 171.

220. VENDOR AND VENDEE — Possession. — Open and notorious possession of land puts a purchaser on inquiry as to the extent of possessor's title, though by the records it appears that he is holding under a deed from a stranger to the title. — *Bank of Mendocino v. Baker*, Cal., 22 Pac. Rep. 1037.

221. VENDOR'S LIEN—Execution.— Gen. St. Colo. § 1835, subjecting real estate to execution sale, declares that the term "real estate" includes "all interest of the defendant, or any person to his use, held or claimed by virtue of any deed, bond, covenant, or otherwise for a conveyance, or as a mortgagor:" *Held*, that a vendor, who by contract subsequently releases his trust-deed for the purchase price, and merely reserves a lien, has only a chose in action, and no interest in the land which can be made the subject of an execution sale. — *Fallon v. Worthington*, Colo., 22 Pac. Rep. 960.

222. WATER COURSES — Pollution. — One who, while boring for gas on his own land, strikes the fresh water veins which supply the wells of another, and a little lower down strikes veins of salt water, which water rises and mingles with the fresh, destroying the wells, is liable for the injury, where it is made to appear that the injury was plainly to be anticipated, and preventable by the outlay of a small amount of money.—*Collins v. Chartiers Val. Gas. Co.*, Penn., 18 Atl. Rep. 1012.

223. WILLS—Description of Devisee. — A residuary devise "unto my nephews and nieces hereinbefore named" does not include legatees previously mentioned in a separate clause of the will, and described as the children of testator's deceased niece, and nowhere classed with testator's nephews and nieces, to a number of whom legacies are given.—*In re Hunt's Estate*, N. Y., 23 N. E. Rep. 120.

224. WILL—Probate.—A writing, not in the form of a will, but reciting "a few little things I would love to have done," and adressed to no one by name, is sufficient to be received as the will of the maker.—*Appeal of Knox*, Penn., 18 Atl. Rep. 1021.

225. WILL—Bequests.—A testator directed his executors and trustees to convey to the corporation of the City Hospital of the city of his residence, when established," a certain lot of land, together with the sum of $50,000 in money; "said lot of land to be used as a site for a hospital, and such portion of said fifty thousand dollars to be used and expended as may be deemed necessary for the construction of such hospital buildings as the wants of the city may require; the remaining portion of said fifty thousand dollars to be held in trust, and the income therefrom to be applied to defraying the current expenses of said hospital:" *Held*, that it was not testator's intention to make his gift dependent on the occupation of the particular lot as a site for the buildings, and that, it becoming impracticable to use that lot, the same might properly be sold, and the proceeds used in defraying the current expenses of the hospital.—*Weeks v. Hobson*, Mass., 23 N. E. Rep. 215.